UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1999/8
22 June 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discriminations and Protection of Minorities
Fifty-first session
Item 3 of the provisional agenda

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

Globalization in the context of increased incidents of racism, racial discrimination and xenophobia

Working paper submitted by J. Oloka-Onyango in accordance with Sub-Commission decision 1998/104

CONTENTS

		Paragraphs	Page
Introduction		1 - 7	2
I.	GLOBALIZATION TODAY: A BROAD ANALYSIS	8 - 13	4
II.	THE NEXUS BETWEEN GLOBALIZATION AND RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA	14 - 31	6
III.	THE HUMAN RIGHTS CONTEXT	32 - 36	12
IV.	CONCLUSIONS AND RECOMMENDATIONS FOR ACTION	37 - 40	14

GE.99-13763 (E)

Introduction

1. In decision 1998/104, the Sub-Commission decided to entrust Mr. Oloka-Onyango with the preparation, without financial implications, of a working paper on the topic of globalization in the context of the increase in incidents of racism, racial discrimination and xenophobia "... to be considered at its fifty-first session as a contribution to the preparation of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance". The present paper is submitted in accordance with that request.

2. The issue of globalization has come to the fore as the world approaches the close of the millennium, and without doubt is among the most critical questions to confront humankind in the present epoch. In all probability, the phenomenon of globalization will assume even greater importance in the century to come. From politicians like Brazilian President Henrique Cardoso to media moguls like Ted Turner, to peasant women in the Andean highlands, the term "globalization" means different things both conceptually and in practical terms. Globalization is thus by no means a unilinear phenomenon developing in predictable manner. Nor is globalization a single process, but rather a complex set of developments often operating in contradictory, oppositional or even conflictual fashion. 1/ Unfortunately, much of the discourse about globalization is conducted from an ethnocentric, "world order" perspective that does not take into account the relationships of power and domination essential to an understanding of the phenomenon. 2/

3. At a minimum, globalization can be described as the process in which the globe is rapidly becoming a single, fused economic unit, driven partially by the formation of regional trading blocs, but increasingly across the globe. 3/ The driving force behind this global "free" market, is "... finance capital, which moves rapidly from one part of the world to another", 4/ and is "... made possible by the explosive strides in technology - particularly in communications and information - since the computer chip revolution in the 1960s". 5/ However, the foregoing definition is essentially an economistic one that does not canvass the various, even contradictory ways in which the phenomenon of globalization manifests itself. 6/ Any discussion of globalization must capture and weigh both those aspects of empowerment and

liberation, as well as the dimensions that are destructive and violative of broad notions of human rights, racial equality, non-discrimination and the struggle for Sustainable Human Development (SHD). 7/

4. There is little doubt that even as humankind has made significant progress in breaking down the formal structures of racial discrimination, differentiation, and xenophobia, 8/ these problems remain major social issues in numerous countries around the world. 9/ To borrow the words of Patricia Williams:

> "How precisely does the issue of colour remain so powerfully determinative of everything from life circumstance to manner of death, in a world that is, by and large, officially 'colour blind'? What metaphors mask the hierarchies that make racial domination frequently seem so 'natural', so invisible, indeed so attractive? How does racism continue to evolve, post-slavery and post-equality legislation, across such geographic, temporal and political distance?" 10/

5. Unfortunately, racism continues to be pervasive in various aspects of contemporary human interaction - from the social and political, to the cultural and economic. It is not a peripheral matter. Thus, one may be led to question whether at the close of the millennium it is only "incidents" of racism, racial discrimination and xenophobia that are on the rise, or that the phenomenon as a whole is in resurgence.

6. The definition of "racial discrimination" in the International Convention on the Elimination of All Forms of Racial Discrimination is fairly comprehensive and seeks to cover virtually all the mechanisms and processes of distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin. 11/ In a nutshell, racism is an ideology of racial supremacy and the mechanisms used to keep selected racial groups in subordinated positions. It includes violence and genocide, racial hate messages, disparagement and threats, overt and covert disparate treatment as well as sanitized racist comments. 12/

7. Nevertheless, a continuing issue of importance is the question of the private, as opposed to the public dimensions of racism, even if the Convention attempts to cover both. 13/ The public/private dimensions of the issue assume particular importance in the discussion of the links between racism and globalization, given that the most prominent actors involved in the process of

globalization are private, non-State entities, such as transnational corporations (TNCs). 14/ Together with the other prominent actors in the debate on globalization - the multilateral institutions (MLIs) like the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO) - comprehensive mechanisms of human rights supervision are still largely lacking. 15/ Effectively engaging this issue in an exhaustive manner is an obligation for all States, civil society and the United Nations.

I. GLOBALIZATION TODAY: A BROAD ANALYSIS

8. The dominant emphasis on the economic aspects of globalization without considering its political, social and cultural consequences is in many respects disempowering. 16/ This is because it obscures both the potential and actual destructiveness of the processes of economic globalization, as well as its connection to incidents of racism, racial discrimination and xenophobia. 17/ Take the "global marketplace" as an example. It is trite knowledge that the market is not necessarily a place of equality, with the benefits and rewards equitably shared by all those who participate in it. Similarly, although the main ideological construct of globalization is the promotion of "free" trade, it is fairly evident that its application in reality is very often quite a different matter. 18/

9. Furthermore, despite the almost frenzied liberalization of African economies throughout the 1980s and 1990s, and the application of stringent structural adjustment programmes (SAPs) by MLIs like the World Bank and the IMF, Africa's marginalized position in the world economy appears not to have changed significantly. 19/ In the case of the Asian "tigers", the consequences of financial liberalization have been mixed at best and positively catastrophic at worst. 20/ The freeing-up of trade regimes that was achieved with the North American Free Trade Agreement (NAFTA) has also led to serious social and political problems in parts of the Americas. 21/ In other words, unemployment, homelessness and cuts in social services are not confined to any geographic location. 22/

10. The phenomenon of globalization is not monolithic, nor is it undifferentiated or lacking in complexity. Kitty Calavita lucidly explains some of the complexities involved:

> "The term [globalization] has been used in countless ways, for myriad purposes, with much slippage, and particularly to use it as applies to increased integration of the world economy is misleading; in fact there

is a process of capital contraction and only three principal regions (North America, Europe and East Asia) are benefiting with the rest of the globe (particularly Africa) becoming heavily marginalized." 23/ Calavita prefers to use globalization to refer to the "stepped-up" integration of first world economies, even while many countries of the world are heavily marginalized in the process. However, this analysis must be taken further. The situation is compounded for the poor when deregulation is accompanied by cutbacks in social services and amenities. 24/ In other words, growing inequality between major regional blocks and countries in the world is not the sole outcome of these processes. 25/

11. Globalization is part of an historical process. 26/ Indeed, three distinct epochs or processes of globalization can be clearly discerned from an examination of contemporary human history. 27/ The first era accomplished colonial imperialism. The second is the age of the internationalization of human rights principles and the growth of a global civil society. This second stage has run concurrently with the third - the age of late capitalism in which there is a manifestation of "... multinational hegemony and the dominance of international financial institutions both emerging as suprastatal centres of authority". 28/ All three stages are connected and overlap.

12. The "other side" in the debate about globalization is the phenomenal growth in non-State, relatively autonomous actors, concerned with issues such as trade, consumer protection, the environment and human rights. 29/ This "globalized" civil society has emerged apace with developments in communications and the internationalization of legal principles from the Universal Declaration of Human Rights (UDHR) to the recent conventions on various aspects of the environment. 30/ Global civil society has successfully globalized many issues of contemporary concern to humankind. Indeed, in the recent debate over the Multilateral Agreement on Investment (MAI), the operations of global civil society were crucially significant in the eventual abandonment of the process of negotiating the draft treaty. 31/ One commentator thus described the confrontation between global civil society and the actors behind the MAI as "the clash of globalizations". 32/

13. A significant question nevertheless remains as to whether global civil society is itself free of many of the structural prejudices and elements of discrimination that they blame on others. For example, what is the degree to which civil society actors from the "South" effectively participate in the

formulation of the mainstream global human rights agenda and influence its outcome? 33/ How much attention is being paid to the debilitating consequences of the processes of globalization and the need for a genuinely holistic approach to human rights that does not privilege one category of rights over another? 34/ Is global civil society truly free from the hierarchies of race, gender, ethnicity and class? In short, global civil society must also step back and make an incisive and critical self-examination of the extent to which it also respects the human rights ideals to which it is bound, and seeks to free itself of debilitating social divisions that it might transpose to the international arena. 35/

II. THE NEXUS BETWEEN GLOBALIZATION AND RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

14. The 1990s have witnessed what can only be described as dramatic global developments with regard to issues concerning racism, racial discrimination and xenophobia. On the one hand, it is the decade of the final collapse of official apartheid in Africa and, on the other, of the genocide in Rwanda. It is both the decade of "multiculturalism" and "world music" and of the phenomenon of "ethnic cleansing". Overall, there is an alarming rise in racism, racial discrimination and xenophobia, and in particular, the incidences of violent and virulent forms of racism and negative ethnic differentiation appear to have gained in strength. In many respects, both the positive and the negative developments in this area can be related to the phenomenon of globalization. 36/

15. The methods by which the structures of racism are perpetuated are varied and include both low and high levels of distribution, ranging from graffiti to violent murder. 37/ In the age of globalization, a particularly disturbing format for the distribution and propagation of racist messages and symbols is the Internet, which has literally exploded onto the global scene in the last several years. The benefits of the Worldwide Web are numerous and fairly obvious in breaking down the barriers of communication, creating global issue-based networks and releasing a flood of information. However, the same mechanism can just as easily be used to pervade violent, sexist, hateful, pornographic and invariably racist websites. Those sites have heightened the use of the medium as a particularly effective, and difficult to manage forum for the transmission of racist and xenophobic messages. According to one

observer speaking of the medium with respect to violent sites: "There's still a little bit of the wild, wild Web aspect of it". 38/ The same applies to racist sites, and indeed, in many respects, the process of policing the same is extremely difficult. As Joel Wallman has observed: "Movements which are small and isolated in their own countries gain solace and often practical assistance from like minded groups abroad". 39/ The Internet has greatly facilitated this global process of the international consolidation of hate.

16. In similar fashion, radio - as in the case of Radio-Télévision Libre des Milles Collines in the Rwandan genocide 40/ - is an even more powerful and pernicious tool. This is particularly the case in societies that suffer high levels of poverty and marginalization, attended by illiteracy and dictatorship where alternative and oppositional politics is highly circumscribed. Unfortunately, sometimes the connection of such societies with the forces of globalization - which may be manifested in the form of international arms transfers (in the case of the Sudan, Angola or the Congo) and SAPs (in relation to Burundi) - is not necessarily positive. 41/ Such societies provide the necessary tools with which to promote armed conflict which often leads to ethnocide, while the forces of globalizations have exacerbated conditions of unemployment, social exclusion and dispossession, the combination of which adds fuel to underlying tensions.

17. The process of globalization may itself carry within it notions of racial superiority and discrimination based on a vision of the world seeking to make uniform, to dominate or to suppress. 42/ Take, for example, the case of intellectual property rights which under the aegis of WTO, are covered by the Trade-Related Aspects of Intellectual Property Rights (TRIPS). In the words of one author, TRIPS is basically designed to benefit, "corporatized, post-modern economies". 43/ Furthermore,

> "By mandating this model, governments in developing countries are faced with the difficult job of destroying, or at least attempting to destroy, native conceptions about life and living and about what constitutes an ordered society. The allocation of material value to goods and the way in which this value is expressed, is grounded firmly in the history and evolution of a people. The internationalization of property rights threatens to undermine, if not totally destroy, the values that indigenous systems ascribe to intellectual property and the manner in which they allocate rights to intellectual goods." 44/

18. In this regard, international legal regimes that give shape and substance to the processes of globalization foster the enhanced exclusion of groups that already exist in a disadvantaged relationship to society at large.

19. Similarly, the growth of global industries like Coca-Cola and Reebok may appear quite innocuous. As the Human Development Report 1998 points out, there are "global elites" and "global middle classes" who follow the same consumption styles, showing preferences for "global brands". 45/ While UNDP points to the dangers to consumer rights entailed by processes of globalization, there is little doubt that the homogenizing influence of a global culture primarily characterized by consumerism adversely affects the status and well-being of minority and indigenous groups. 46/ As Fleur Johns has observed in relation to the Aboriginal peoples of Australia: "Without a positive right to determine their own cultural future, Aboriginal people have no international means of opposing incremental processes of cultural homogenization and cultural expropriation". 47/ Johns expounds upon this point with an examination of the boomerang, arguing that it has been "... transformed into a commodity and image [that] almost completely excludes Aborigines. As a souvenir or logo the boomerang is more emblematic of a culture and economy in which Aboriginal people remain relatively powerless than an image of Aboriginal culture itself". 48/

20. Racism and globalization come together in the environment, with the phenomenon referred to as "global environmental racism" - a manifestation of a policy which has found domestic expression in countries like the United States, but which also has a global dimension. 49/ Within the United States, the problem of "environmental racism" arises when "... decision makers choose disposal sites based on factors other than the equal distribution of the site's benefits and burdens. Often, a location for a site is chosen solely on the basis of which neighbourhood is the least likely to present effective opposition to its selection as a disposal site. Empirical evidence suggests that such neighbourhoods typically are comprised largely of minorities and the poor". 50/ At the international level, the phenomenon of environmental racism is a "... microcosm of the problem of hazardous waste exporting". 51/ There is little doubt that such exports are largely targeted at countries that are poor and mainly located in the southern hemisphere of the globe. 52/

21. Globalization has certainly fostered racism, negative ethnic differentiation and discrimination in many parts of Africa, although some scholars have also pointed to positive aspects of its impact, such as the consolidation of ethnic support groups for persons laid off from their jobs as a consequence of economic liberalization and privatization. 53/ Links have been made between globalization in the form of SAPs and the rise of ethnic conflicts as well as the increase in xenophobia. 54/ SAPs have become the most prevalent modus operandi for the economies of a majority of African countries goaded on by institutions like the IMF and the World Bank. According to Julius Ihonvbere, this has left the poor majority, with "... no option but to find solace, support and security in ethnic or communal associations where the State has woefully failed". 55/ There is consequently a link between the rise in ethnic tensions and many of the policies that lie at the core of globalization. 56/

22. It is trite knowledge that globalization promotes the free movement of goods and capital but controls the movement of certain kinds of people, particularly refugees, asylum seekers and migrant workers. Nowhere is this more apparent than in the arena of immigration and asylum law and policy, especially in Western countries, where "Fortress Europe" 57/ and "Fort Knoxica" are the dominant policy frameworks governing contemporary approaches to the phenomenon of immigration and even to the provision of asylum. 58/ April Gordon points to the "growing fear" of many in Europe and the United States that "... there are too many immigrants, that many of them are racially and culturally unassimilable, and that they take jobs from the native population". 59/

23. A classic example of the Fort Knoxica syndrome can be found in proposition 187 that was passed by California voters in 1994 and was designed to exclude immigrants from education, medical care and social service benefits, and also prohibit public schools from admitting undocumented alien children. 60/ The law also compelled each school to verify the immigration status of any student, parent, or guardian suspected to be out of status. Fortunately, in the case of *United Latin American Citizens v. Wilson* 61/ the court enjoined the enforcement of the law insofar as it limited the right of undocumented alien children from attending public schools. 62/

24. Post cold war Europe has been characterized by the emergence of "... ethnocentrism, virulent nationalism and religious extremism". 63/ The

rise in xenophobia and overtly racist practices has led to a serious diminution in the legal protection of refugees, migrant workers and asylum seekers in many countries. 64/ It goes without saying that those most adversely affected happen to be people of colour. 65/ In a far-reaching analysis of identity, citizenship and exclusion in Europe, Jacqueline Bhabha demonstrates that the situation of non-nationals in the context of consolidating "Europeanization" is unfortunately one of increasing marginalization:

> "Racial harassment and violence persist across EU member States. Discriminatory police behaviour and visible ghettoization characterize European metropolitan cities. Widespread racism in employment and in the provision of public services remains a matter of acute public concern across the EU. Despite formal legal entitlements to an extensive range of State benefits, in practice, Europe's third country nationals do not enjoy the full civil rights to which the 'native' population has access." 66/

25. The last year alone has witnessed the choking, suffocating and shooting deaths of refugees, immigrants and asylum seekers (particularly Africans) in Austria, Belgium, the United States and Germany, with the most recent of these being the death of a Sudanese deportee on a flight from Frankfurt to Cairo. 67/ Those deaths have either been at the hands of police officials or immigration officers, with the most brutal being the death of Guinean immigrant Amadou Diallo shot over 40 times by members of the New York Police Department. 68/

26. The resurgence of racism, racist practices and xenophobia are of particular concern among several of the institutions that are supposed to be central to providing solace and protection to the populace. Most prominent among them are the immigration and police services, many of which over the past few years have manifested attitudes that demonstrate a growing insulation from the changing demographic situation around them. 69/ The recent report of an inquiry into the death of Stephen Lawrence in the United Kingdom provides an illuminating definition of the resilience of a phenomenon first cogently described in the mid-1960s as "institutional racism" - a phenomenon by which the learned commissioners were convinced that the London Metropolitan Police Service (MPS) was plagued. To quote, "the concept of institutional racism which we apply consists of":

"The collective failure of an organization to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people." 70/

27. Despite the recommendation for a "partnership approach" between the police and minorities to deal with the phenomenon, the response of the MPS Commissioner was decidedly lukewarm. 71/ The problem of institutional racism is by no means confined to the London Police.

28. The belief that globalization leads to an increasingly unified "global" world is rather misleading. Simultaneous to the very processes of opening up, there are parallel movements of closure that manifest the duplicitous nature of the phenomenon. Thus, while the contemporary forces of globalization are increasingly dismantling economic boundaries, physical and geographical borders are in fact becoming even more rigid. Unfortunately, the rigidities are often imposed on the basis of considerations that are ultimately discriminatory in nature. 72/ The simultaneous opening and closure of Europe through political and economic integration may have fostered the spread of xenophobia and ethnicity. 73/ In this way, processes such as economic integration that are at the core of the phenomenon of globalization enhance the marginalization of many non-white Europeans, thereby compounding the conditions of discrimination which they already face.

29. Differentiation within those countries where globalization is believed to be leading to dramatic levels of economic growth and development appears to have become part and parcel of the process. In the final analysis, globalization is essentially benefiting a small, privileged minority, while it is marginalizing a considerable number, often erroneously referred to as the "underclass". 74/ That marginalization - which disproportionately affects people of colour, immigrants and women - explains why even in the midst of globalization processes that have dramatically increased levels of overall (global) wealth, there is also growing immiseration. The differential forces that motivate the phenomenon can also partly explain the increasing incidents of racism, racial discrimination and xenophobia.

30. Although grounded in xenophobia, such fears may reflect certain realities that stem in part from the phenomenon of globalization. In the first instance

it demonstrates that the contraction of the world has made movement much easier. This has resulted in more people of "difference" seeking various opportunities wherever they can be found. At the same time, the fear of immigration is fueled by the differential benefits of globalization. While a handful of TNCs graduate from making super-profits to reaping mega-profits, the gains made are being accrued in a context of "recession, restructuring, and deindustrialization". 75/ The result is the loss of numerous jobs and the stagnation of citizens' incomes. Latent xenophobic feelings are easily translatable into violent and virulent forms of racism directed against those who are viewed as exacerbating the problem.

31. But even within the context of the refugee crisis, dual regimes or systems of support and protection manifest themselves. In the wake of the crisis in Kosovo, some observers have commented on the differential treatment of refugees who are white and those who are not. Miller and Simmons have examined the disparate treatment in the diet and rations, health services, shelter provisions and even water rations between refugees from Kosovo, and those in many African situations. 76/ The situation of African refugee and internally displaced women acutely brings together the relationship between gender, racial discrimination and the loopholes in contemporary international legal standards. 77/ Globalization has relegated black, African women to the bottom of the heap.

III. THE HUMAN RIGHTS CONTEXT

32. Human rights issues are seriously implicated in the preceding discussion in several different respects, from the right to self-determination to the freedoms of association, expression and assembly. 78/ The prohibition of racial discrimination is recognized as one of the most vital norms in international human rights law, enjoying the status of *jus cogens*, i.e. a peremptory norm of international law from which no derogation is acceptable. The term "racial discrimination" essentially means treating people less favourably than others on account solely or mainly of their racial characteristics. Discrimination may both be the result of "identical treatment" in cases where different treatment would be more appropriate, or "different treatment" in situations where persons should be treated the same. 79/ The processes of globalization in several different respects fail to meet this basic standard of compliance with the norm of non-discrimination.

33. There are of course several international human rights instruments that are relevant to the issue under discussion. Among them are the Charter of the United Nations, the UDHR, the two International Covenants on Human Rights and, most importantly, the International Convention on the Elimination of All Forms of Racial Discrimination. Article 4 of the Convention, for example, covers the requirement to criminalize racist hate messages - (that the obvious and growing location for such messages is the Internet is perhaps the most symbolic feature of the globalization process). 80/ Fundamental to any discussion on the issue of racism, racial discrimination and xenophobia is the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. In addition, there is the UNESCO Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid, and Incitement to War. The need to limit racist hate messages is implicit in basic human rights documents, extending from the Charter to the UDHR. Central to their ethos is the primacy of the right to equality and freedom from racism. Several regional instruments also recognize this primacy, as does the existing domestic legislation of several nations. In this respect, several countries do not uphold the right of free speech in absolutum. Such countries have outlawed certain forms of racist speech.

34. There is also the Convention on the Elimination of All Forms of Discrimination Against Women, which in general outlaws any disparate treatment of women, but article 11 specifically deals with the issue of discrimination in employment. In instances of privatization, downsizing and the other essential devices of globalization, it is most often minority, indigenous and poor women who are most adversely affected. 81/ The Convention on the Rights of the Child has relevance to the issue of child labour, while the various instruments governing the situation of migrant workers, minorities and refugees are also critical in many different respects. Finally, the numerous International Labour Organization (ILO) conventions and recommendations are also pertinent.

35. Globalization has reduced the role of the State and, as a consequence, it has increased the power of particular non-State actors, especially TNCs and MLIs. At the same time, there is a lack of effective mechanisms to enforce the accountability of such non-State actors, even allowing them to evade

domestic laws. 82/ Many of these laws include principles of affirmative action for marginalized or traditionally discriminated against groups, women, minorities and indigenous peoples. Furthermore, because they are private, non-State actors, enforcing certain obligations like respect for codes of conduct, trade union laws, rights of association and expression, etc. may prove difficult. 83/

36. The process of "downward levelling" or the "race to the bottom" in which generally poor countries vie among themselves to attract foreign direct investment by the lowering of social protections, ultimately does not enhance the protection of fundamental human rights. 84/ An aspect of such levelling which is often linked to the processes of globalization is the Economic Protection Zones (EPZs) that are increasingly being established in several countries in the South. Many do not have very well developed regulatory mechanisms. Nevertheless, article 26 of the International Covenant on Civil and Political Rights outlaws discrimination on any ground, both in the public and the private arena. It is thus impermissible to treat people less favourably than others on any grounds, unless there is an overriding justification (as with affirmative action) to do so.

IV. CONCLUSION AND RECOMMENDATIONS FOR ACTION

37. The present document has provided only a very broad outline of a phenomenon that is fairly complex and intricate in its varied manifestations. As a contribution by the Sub-Commission to the preparation of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, it amply demonstrates that the issue of globalization and its impact on increasing incidents of racism, racial discrimination and xenophobia is not ephemeral. It is an issue that requires more comprehensive thought, study and action by the United Nations system, multilateral agencies and human rights organizations.

38. The Committee on the Elimination of Racial Discrimination (CERD) needs to consider the various aspects of the phenomenon of globalization raised in this paper, in its own examination of the matter. In particular, the Committee should encourage States parties to the Convention to highlight the different ways in which globalization has fostered increasing incidents of racism, racial discrimination and xenophobia, and the efforts which they have taken to address these developments. The Committee also needs to examine ways in which the various international human rights instruments can be better applied to

the non-State actors identified as having a critical role in the process of globalization, and whose activities may directly or indirectly foster increasing incidents of racism, racial discrimination and xenophobia.

39. It is necessary to point out that State agencies such as the police and immigration officers - who are reacting to the diverse manifestations of globalization such as increased immigration - have a clear role and obligation under the various international instruments. In particular, they must ensure that they execute their functions in a non-discriminatory, non-racist and manifestly fair fashion. CERD needs to encourage countries that have experienced particularly acute problems in this regard to review the modes and methods of recruitment, to institute systems of training that are racially sensitive, and to encourage the evolution of police and immigration forces that are more inclusive and diverse.

40. In light of resolution 1999/59 of the Commission on Human Rights, in which the Commission requested the Sub-Commission to undertake a study on the issue of globalization and its impact on the full enjoyment of all human rights for the consideration of the Commission at its fifty-seventh session, the Sub-Commission should cooperate more closely with CERD in making a much more comprehensive examination of the varied impacts of globalization on racism, racial discrimination and xenophobia.

Notes

1/ See Anthony Giddens, "Runaway World", The 1999 British Broadcasting Corporation (BBC) Reith Lectures, located at: http://news.bbc.co.uk (accessed on 11 April 1999), p. 1.

2/ See Dani Wadada Nabudere, "Globalization, the African Post-colonial State, Post-traditionalism and the New World Order" (unpublished paper on file with the author, 1998).

3/ To borrow the colourful words of Upendra Baxi:

> "The space for plurality shrinks to a point where the whole world becomes an endless chain of shopping arcades or chains of department stores, where all of us become potential Gremlins, lustfully mutated micro-organisms, in pursuit of instant, technologically mediated pleasures, stranger to the very idea of joy. The vision of global threatens to take away local spaces. 'Think globally, act locally' is a maxim confiscated of its meaning in an era when the 'local' becomes the ghetto of the 'global'. One world imperialism is in the making of globalization."

Upendra Baxi, Inhuman Wrongs and Human Rights, 1994, p. 45.

4/ Devan Pillay, "Globalisation, Marginalization and the Retreat of the State in Africa: The Role of Civil Society in the Pursuit of Democratic Governance, Socio-Economic Development and Regional Integration", ISTR Report, publication of the International Society for Third-Sector Research, December 1997, p. 4.

5/ Ibid.

6/ See, Giddens, op.cit., note 1, p. 2.

7/ cf. Rodolfo Stavenhagen "Globalization and Exclusion", in Globalization and Discrimination, International Movement Against All Forms of Discrimination and Racism (IMADR), ed., 1998.

8/ It is important not to confuse or collapse the concepts of "race" or "racism" and "ethnicity". As Allen and Eade point out, racism and nationalism have particular qualities that make them different from other kinds of ethnicity. Furthermore, these qualities, "... also make them enormously important in modern states, and perhaps even more important as the sovereignty of states is being eroded by processes associated with 'globalization'". See, Tim Allen and John Eade, "Anthropological Approaches to Ethnicity and Conflict in Europe and Beyond", International Journal on Minority and Group Rights, vol. 4, 1996/1997, p. 239.

9/ See Rita Jalali and Seymour Martin Lipset, "Racial and Ethnic Conflicts: A Global Perspective", in New Tribalisms: The Resurgence of Race and Ethnicity, Michael W. Hughey (ed.), 1998, pp. 317-343.

10/ Patricia J. Williams, Seeing a Colour-Blind Future: The Paradox of Race, 1997, p. 13.

11/ Some commentators have criticized the Convention definition as not broad enough. Hernández-Truyol has critiqued the definition because it "... effectively institutionalizes the United States construct for the analysis of race: binary white/black paradigm". She argues that this model is "... under inclusive, incoherent, and misdirected by virtue of its conflation and confusion of interdependent and indivisible but holistic and nonatomized identities". See Berta Esperanza Hernández-Truyol, "Race, Sex and Human Rights: A Critical Global Perspective", Proceedings, American Society of International Law, vol. 91, 1997, p. 413. Lisa Crooms has also argued that the conceptualization of race in the Convention assumes that maleness "... represents a point of gender neutrality and the centrality of principles of formal equality to (United States) anti-discrimination law". Furthermore, that "Race is conceptualized in phallocentric terms that cannot handle, as race claims, those women's human rights violations for which there are no parallel violations for men". See Lisa Crooms, "What Do Women's Human Rights Have to Do with the Race Convention?", Howard Law Journal, vol. 40, 1997, p. 620.

12/ Mari J. Matsuda, "Public Response to Racist Speech: Considering the Victim's Story", in Words that Wound: Critical Race Theory, Assaultive Speech and the First Amendment, Mari J. Matsuda et al. (eds.), 1993. The

ideology is reinforced by "gutter racism, parlour racism, corporate racism and government racism ... with violence as a necessary and inevitable part of the structure of racism". Ibid., p. 24.

13/ Article 2 (d) of the Convention stipulates that States parties have a duty to bring to an end "... racial discrimination by any persons, group or organization", which provides the obvious legal foundation for action against private actors. The implementation of this provision is of course not without difficulty.

14/ According to Michael Posner in a discussion on the place of business and human rights, "... there are also big international companies, many of them based in the United States and the West, that are in the middle of this discussion. The question is what affirmative obligations or responsibilities go with being an economic actor in this setting? We should discuss how to enforce rights or standards - which are fairly clear on issues like non-discrimination, slave labour, or even child labour. There is an emerging consensus that these are rights and standards, but when local governments are weak or unwilling to enforce, what is the affirmative obligation of companies?", Harvard Human Rights Program, Business and Human Rights, 1997, p. 18.

15/ Dirk Messner, "Towards a New Bretton Woods: Globalisation and the Challenges Facing Politics", Development and Cooperation, 1999, p. 4.

16/ See David Slater, "Contesting Occidental Visions of the Global: The geopolitics of theory and North-South Relations", Mas Alla Del Derecho - Beyond Law, Instituto Latinamericano de Servicios Legales Alternativos, No. 4, 1994, p. 97.

17/ Tade Aina, Globalization and Social Policy in Africa: Issues and Research Directions, 1997, pp. 8-10 and 18-20.

18/ See Marc W. Brown, "The Effect of Free Trade, Privatization and Democracy on the Human Rights Conditions for Minorities in Eastern Europe: A Case Study of the Gypsies in the Czech Republic and Hungary", Buffalo Human Rights Law Review, vol. 4, 1998.

19/ See A. Hoogvelt, Globalisation and the Postcolonial World, 1997.

20/ Khawar Mumtaz, "Bringing Together the Rights to Livelihoods and Reproductive Health", Development, Vol. 42, 1999, pp. 15-17 (arguing that the economic globalization phenomena has been disadvantageous for South Asia as a whole, "... and have had a particularly negative impact on women").

21/ John Dent, "Economic Liberalization, the NAFTA and Human Rights: Illustrations from Canada, Mexico and Chile", Mas Alla Del Derecho - Beyond Law, No. 11, 1994. Cuninghame and Corona have linked the need for "autonomy from NAFTA" to the Chiapas rebellion in Mexico in January 1994. See Patrick Cuninghame and Carolina Ballestros Corona, "A Rainbow at Midnig: Zapatistas and Autonomy" Capital and Class, vol. 66, 1998, p. 19.

22/ Pierre Sané, "Fundamental Freedoms", in Human Rights: The New Consensus, Richard Reoch (ed.), 1994, p. 41.

23/ Kitty Calavita, "Immigration Law and Marginalization in a Global Economy: Notes from Spain", Law and Society Review, vol. 32, 1998, p.537.

24/ See Vivien Schmidt, "The New World Order, Incorporated: The Rise of Business and the Decline of the Nation-state", Daedalus, vol. 124, 1995.

25/ The UNDP's most recent report recalls that, "In 1960 the 20 per cent of the world's people who live in the richest countries had 30 times the income of the poorest 20 per cent ... by 1995, 82 times as much income.", UNDP, Human Development Report, 1998, p. 29.

26/ As S. Hall has pointed out: "The globalizing process ... is located within a much longer history; we suffer increasingly from a process of historical amnesia in which we think that just because we are thinking about an idea it has only just started.", S. Hall, "The Local and the Global: Globalization and Ethnicity", in Culture, Globalization and the World System, A.D. King (ed.), 1991, p. 20.

27/ For a critical analysis, see, B.S. Chimni, "Marxism and International Law: A Contemporary Analysis", Economic and Political Weekly, 6 February 1999, p. 337, esp. 338-339.

28/ Baxi, op.cit., note 3, p. 39.

29/ Mustapha Kamal Pasha and David L. Blaney, "Elusive Paradise: The Promise and Peril of Global Civil Society", Alternatives, vol. 23, 1998, p. 422.

30/ See Richard H. Stanley (opening remarks), "The United Nations and Civil Society: The Role of NGOs", 1999, p. 8.

31/ See J. Oloka-Onyango and Deepika Udagama, "Human Rights as the Primary Objective of International Trade, Investment and Finance Policy and Practice", working paper submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1999/11).

32/ Stephen Kobrin, "The MAI and the Clash of Globalizations", Foreign Policy, Fall 1998, pp. 97-109.

33/ For an illuminating examination of this issue, see Makau Mutua, "The Ideology of Human Rights", Virginia Journal of International Law, vol. 36, 1996, pp. 607-626.

34/ Khawar Mumtaz has for example observed that at the World Conference on Population and Development held in Cairo in 1995, women from the South "... found inadequate reciprocal sentiment for their issues of sheer survival in the face of rising globalization, for the right of quality of life and sustainable livelihoods. They found that the issue of globalization was not receiving matching support and attention that the women of the South were willing to give to the women of the North.", Mumtaz, op.cit. note 20, p. 17.

35/ Pasha and Blaney, op.cit. note 29.

36/ Of course, the reasons for the rise in incidents of this nature are multifarious - from the social to the psychological. For an example of an analysis that looks at the latter, see, J. Anderson Thomson et al., "The Psychology of Western European neo-racism", International Journal on Group Rights, vol. 3, 1995.

37/ The shocking decapitation of James Byrd Jr. who was tied to the fender of a car and dragged for two miles is one such recent example of the latter. See, "Painful killing described as trial nears its end", New York Times, 23 February 1999, p. A16, col. 2.

38/ See Reuters, "Victims call for end of Web violence", reported in New Vision, 26 May 1999, p. 20.

39/ Joel Wallman, "Brotherhoods of Race and Nation: An HFG Conference", The HFG Review, Harry Frank Guggenheim Foundation, Fall 1996, vol. 1, No. 1.

40/ See Jamie Frederic Metzl, "Rwandan Genocide and the International Law of Radio Jamming", American Journal of International Law, vol. 91, 1997, p. 629.

41/ See Léonce Ndikumana, "Institutional Failure and Ethnic Conflicts in Burundi", African Studies Review, 1998, p. 43 (arguing that in the case of Burundi donor funds keep flowing into the country even when there is evidence that State institutions are being used as machines of oppression and repression against the population).

42/ See Victor Kaisiepo, "The Rights of Indigenous Peoples in a Rapidly Changing World", Indigenous Affairs, vol. 3, 1998.

43/ Ruth L. Gana, "Has Creativity died in the Third World? Some Implications of the Internationalization of Intellectual Property", Denver Journal of International Law and Policy, vol. 24, 1995, p. 143

44/ Ibid.

45/ UNDP, op. cit. note 25, p. 6.

46/ Giddens, op. cit. note 1, p. 5.

47/ See, Fleur Johns, "Portrait of the Artist as a White Man: The International Law of Human Rights and Aboriginal Culture", Australian Yearbook of International Law 1995, and Claudio Lomnitz, "Decadence in Times of Globalization", Cultural Anthropology, vol. 9, esp. p. 262 (arguing that "multiculturalism" in so-called first world countries has succeeded in further subordinating the cultures of so-called third world countries).

48/ Ibid.

49/ Dent, op. cit. note 21, pp. 90-92.

50/ Hugh J. Marbury, "Hazardous Waste Exportation: The Global Manifestation of Environmental Racism", Vanderbilt Journal of Transnational Law, vol. 28, 1995, p. 279.

51/ Ibid., p. 291.

52/ As Prof. Giddens has observed: "Some transnational companies sell goods that are controlled or banned in the industrial countries - poor quality medical drugs, destructive pesticides or high tar and nicotine content cigarettes. As one writer put it recently, rather than a global village, this is more like global pillage." See Giddens, op. cit. note 1, p. 5. See also Kasiespo, op. cit. note 42, p. 13.

53/ See, Eghosa Osaghae, *Structural Adjustment and Ethnicity in Nigeria*, Nordiska Afrikainstitutet, Research Report No. 98.

54/ Ibid., pp. 44-54.

55/ Julius Ihonvbere, "The 'irrelevant' state, ethnicity and the quest for nationhood in Africa", Ethnic and Racial Studies, vol. 17, 1994, p. 51.

56/ See, J. Bayo Adekanye, "Structural Adjustment, Democratization and Rising Ethnic Tensions in Africa", Development & Change, vol. 26, 1995.

57/ In the 1980s and 1990s, both European countries and the United States adopted more restrictive immigration and asylum policies. See, David O'Keefe, "The Emergence of a European Immigration Policy", in European Law Review, vol. 20, 1995.

58/ See, Bill Frelick, "Refugee Rights: The New Frontier of Human Rights Protection", Buffalo Human Rights Review, vol. 4, 1998, pp. 268-271 (describing the xenophobic response of European States which led to the creation of "safe havens" in Bosnia).

59/ April Gordon, "The New Diaspora: African Immigration to the United States", Journal of Third World Studies, vol. 15, 1998, p. 97.

60/ See, Sandra L. Jamison, "Proposition 187: The United States May Be Jeopardizing its International Treaty Obligations", Denver Journal of International Law and Policy, vol. 24, 1995.

61/ C.D. Cal. 1995.

62/ On the negative side, however, the court did not invalidate provisions in the law that prevented undocumented aliens from receiving public, post-secondary education as well as certain welfare and medical benefits.

63/ Theo van Boven, "Balances and Challenges of the International Protection of Human Rights: 50 Years Universal Declaration of Human Rights" in IMADR, op. cit. note 7, p. 107.

64/ Ibid., pp. 358-359. See also, Exclusion and Inclusion of Refugees in Contemporary Europe, Philip Muus, (ed.), 1997.

65/ See, Jalali and Lipset, op. cit. note 9, p. 323 (noting that in Germany attacks of a racial nature - particularly directed against foreign workers and their dependants - occur "every day", with over 600 such attacks being reported in 1989 alone).

66/ Jacqueline Bhabha, "'Get Back to Where You Once Belonged': Identity, Citizenship, and Exclusion in Europe", Human Rights Quarterly, vol. 20, 1998, p. 602.

67/ Reuters, "Sudan deportee dies on plane", *Sunday Monitor*, 30 May 1999, p. 7. It is reported that the police used force to secure him to his seat and put a motorcycle helmet on his head.

68/ Ronald Kayanja, "Fighting Racism? You Need Money", *Sunday Monitor*, 14 March 1999, p. 29.

69/ See, Richard Latter, "Policing the Rising Tide of Violence in Europe", International Journal on Group Rights, vol. 2, 1994, pp. 191-192.

70/ The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny, CM 4262-1 (February 1999), accessed on 18 April 1999 at: http://www.official-documents.co.uk/document/cm42/4262.html The report went on to state that: "It [institutional racism] persists because of the failure of the organization openly and adequately to recognize and address its existence and causes by policy, example and leadership. Without recognition and action to eliminate such racism it can prevail as part of the ethos or culture of the organization. It is a corrosive disease."

71/ Alan Travis, "Met chief balks at race laws", The Guardian, 11 March 1999, p. 1.

72/ Cris Shore, "Ethnicity, Xenophobia and the Boundaries of Europe", International Journal on Minority and Group Rights, vol. 4 (1996/97).

73/ Ibid., p. 259.

74/ See, Williams, op. cit. note 10, pp. 32-33 (describing the term "underclass" as a euphemism for blackness).

75/ Ibid., p. 97.

76/ Christian Miller and Ann Simmons, "Chicken for Kosovo refugees, no water for the Africans", The Monitor, 26 May 1999, p. 14 (originally printed in the Los Angeles Times as "Relief camps for African, Kosovars worlds apart" on 24 May 1999).

77/ See, J. Oloka-Onyango, "The Plight of the Larger Half: Human Rights, Gender Violence and the Legal Status of Refugee and Internally Displaced Women", Denver Journal of International Law and Policy, vol. 24, 1996.

78/ See, Florence Butegwa and Taaka Awori, "Globalization and its Impact on Economic and Social Rights in Africa" (paper on file with author, 1998).

79/ See, International Commission of Jurists, Position Paper for the World Summit for Social Development, 1995.

80/ See, further, International Council on Human Rights, Taking Duties Seriously: Individual Duties in International Human Rights Law, 1999.

81/ See, Angela Keller-Herzog, Globalisation and Gender: Development Perspectives and Interventions, December 1996.

82/ See, Schmidt, op. cit. note 24.

83/ For an examination of the difficulties of enforcing respect for these standards in the context of the debate over breast-milk substitutes, see, Leslie Wirpsa, "Is Breastfeeding a Natural Right? The Impact of Free Trade on the Unethical Marketing of Breastmilk Substitutes", Más Allá del Derecho - Beyond Law, No. 9, 1994.

84/ See, Jeremy Brecher and Tim Costello, Global Village or Global Pillage: Economic Reconstruction from the Bottom Up, 1995.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1999/9
12 August 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-first session
Agenda item 4 (c)

THE REALIZATION OF ECONOMIC SOCIAL AND CULTURAL RIGHTS:

THE QUESTION OF TRANSNATIONAL CORPORATIONS

Report of the sessional working group on the working methods and activities of transnational corporations on its first session

Chairman-Rapporteur: Mr. El-Hadji Guissé

CONTENTS

		Paragraphs	Page
Introduction		1 - 10	2
I.	Activities of transnational corporations	11 - 24	4
II.	Present standards and standard-setting activities	25 - 28	6
III.	Conclusions and recommendations	29 - 36	7
IV.	Recommendations for future work of the working group	37	7
V.	Adoption of the report of the working groupto the Sub-Commission	38	7
Annex:	List of documents before the working group		8

GE.99-14685 (E)

Introduction

1. In accordance with its resolution 1998/8, the Sub-Commission on 3 August 1999 decided to establish, for a three-year period, a sessional working group to examine the activities of transnational corporations. The following experts were appointed as members of the working group: Mr. El-Hadji Guissé (Africa), Mr. Zhong Shukong (Asia), Mr. Asbjørn Eide (Western European and other States), Mr. Paulo Sérgio Pinheiro (Latin America) and Ms. Antoanella Iulia Motoc (Eastern Europe).

2. The working group held three public meetings, on 3, 6 and 10 August 1999.

3. A representative of the Office of the High Commissioner for Human Rights opened the first session of the working group.

4. The working group elected Mr. El-Hadji Guissé as Chairman-Rapporteur.

5. The following members of the Sub-Commission not members of the working group also took part in the discussions: Mr. Alberto Díaz Uribe, Mr. Joseph Oloka-Onyango, Mr. David Weissbrodt, Ms. Halima Embarek Warzazi and Mr. Louis Joinet.

6. The following non-governmental organizations in consultative status with the Economic and Social Council also participated in the meetings of the working group: American Association of Jurists, Centre Europe-Tiers Monde, Habitat International Coalition, Indian Movement "Tupaj Amaru", Indigenous World Association, International Confederation of Free Trade Unions, Movement against Racism and for Friendship among Peoples and Pax Romana.

7. The United Nations Non-Governmental Liaison Service also participated.

8. The following organizations were formally invited to participate: United Nations Conference on Trade and Development, United Nations Research Institute for Social Development, United Nations Development Programme and the International Labour Organization.

9. The working group decided to adopt the following agenda for the duration of its mandate:

1. Election of officers.

2. Adoption of the agenda.

3. Activities of transnational corporations:

(a) Identification and examination of the effects of the activities of transnational corporations on the enjoyment of civil, cultural, economic, political and social rights, including the right to development, the right to a healthy environment and the right to peace;

(b) Gathering and examination of information, including any working paper related to the effects of the activities of transnational corporations on the enjoyment of civil, cultural, economic, political and social rights, including the right to development, the right to a healthy environment and the right to peace;

(c) Preparation of a list, to be updated annually, of transnational corporations providing examples of their activities and indicating their positive and/or negative impacts on civil, cultural, economic, political and social rights, including the right to development, the right to a healthy environment and the right to peace, in countries in which they operate.

4. Present standards and standard-setting activities:

(a) Assessment of how the existing human rights standards apply to the activities of transnational corporations;

(b) Collection and analysis of the existing standards and standard-setting activities pertaining to the human rights aspects of the activities of transnational corporations, including those in other international bodies, NGO-based initiatives, business-based initiatives and private individuals' initiatives such as the MacBride Principles and the Sullivan Principles;

(c) Collection of the various international, regional and bilateral investment agreements in order to analyse their compatibility with human rights.

5. Conclusions and recommendations:

(a) Adoption of recommendations and proposals relating to the possibility of developing a code of conduct for transnational corporations, in order to ensure that their activities are in keeping with the promotion and protection of civil, cultural, economic, political and social rights;

(b) Defining the role of the United Nations, including appropriate implementation mechanisms, in order to ensure the compatibility of the activities of transnational corporations with human rights, including the right to development, the right to a healthy environment and the right to peace;

(c) Recommending the drafting and adoption of mechanisms according to which host and home Governments would be obliged to elaborate internal legal monitoring standards in respect of the activities of transnational corporations;

(d) Analysis of possible liability of States and TNCs failing to fulfil their obligations.

6. Recommendations for future work of the working group on the effects of the activities of transnational corporations on human rights, including the right to development and the right to a healthy environment.

7. Adoption of the report of the working group to the Sub-Commission.

10. The working group had before it a number of documents relating to its agenda. These are listed in the annex.

I. ACTIVITIES OF TRANSNATIONAL CORPORATIONS

11. At the first meeting of the working group, the Chairman-Rapporteur made an introductory statement pointing out that the main task of the working group was to draft a document which would integrate all the measures and norms necessary to ensure that the activities of TNCs were consistent with the promotion and protection of human rights. The three-year mandate of the working group would provide room for debate and a search for consensus.

General comments by members of the Working Group and experts of the Sub-Commission

12. Instead of examining the profits or benefits of TNC activities in respect of different countries, it would be more practical for the working group to identify best practices since its role was not only to identify aspects related to the profit-seeking activities of TNCs but also to those impacting on human rights. In that connection, it was requested that both the positive and negative impacts of the activities of TNCs on the enjoyment of human rights be examined.

13. The following points were emphasized with regard to information-gathering:

(a) A comprehensive collection of background materials would lend credibility to the overall process and provide a good resource for further deliberations;

(b) It would be of greater use if the final report would summarize and analyse the available background information and indicate the human rights context in which TNCs operated. In that connection, special attention should be paid to the impact of TNCs on women and the girl child who might be disproportionately affected by their activities. Educational opportunities in skills and fields most likely to produce highly paid employment in TNCs might be foreclosed to women and the girl child;

(c) There was a need to collect information on the impact of TNCs on indigenous communities, the relationship between the most impoverished communities and the most active transnational business activities, comparisons of minimum standards of living and average wages, the availability of health and other benefits for TNC workers, the mortality rates of TNC workers versus those of the surrounding population, the major corporations which contribute to programmes of the surrounding communities as well as TNCs which had introduced affirmative action or minority contracting programmes.

14. TNCs were carrying out highly important activities for the economies of many countries and for the global economy. However, the impact of their activities might impinge on the fundamental principle of sovereignty.

15. There was a need to address the issue of untimely privatization in the least developed countries. Basic services such as water, electricity and telecommunications might not reach the people in those countries because those services were in the hands of TNCs seeking profits. In that regard, the connection between the privatization process and the expanding role of TNCs should be explored.

16. The issue of intellectual property rights had significant implications for the realization of economic, social and cultural rights. The vast majority of patents were concentrated in the developed world.

17. The 1995 and 1996 reports of the Secretary-General on the human rights aspects of the activities of transnational corporations were important sources in respect of a systematized information-gathering process. Additionally, relevant information from other competent United Nations bodies such as UNCTAD, ILO, the World Trade Organization and the World Bank would be useful.

General comments by NGOs

18. The working group should approach the issue in a broad context, examining the interrelationship of subcontractors, the economy, the community at large and TNCs. Attention should also be paid to military TNCs that affected indigenous populations by producing weapons of mass destruction which led to gross violations of human rights in the world.

19. Reference was made to several United Nations initiatives, particularly the Global Compact launched by the Secretary-General at the Davos World Economic Forum in 1999 and the UNDP Global Sustainable Development Facility (GSDF).

20. It was important to receive information, particularly from specialized bodies such as ILO, UNRISD, WHO and FAO. Information should also be solicited from individual experts. Information from NGOs was equally crucial. It was recommended that relevant publications be collected. Mentioned was the working paper by the American Association of Jurists, entitled "The impact of the practices and activities of transnational corporations on the enjoyment of human rights", which examined the impact of the activities of TNCs on such human rights as labour rights and the right to information.

21. Since the violations of civil and political rights were to a large extent the results of violations of economic, social and cultural rights, the working group might wish to look into the root causes of the violations of economic, social, cultural and environmental rights resulting from the activities of TNCs. In that respect, the report contained in document E/CN.4/Sub.2/1998/NGO/12 was considered to be important.

22. The United Nations Non-Governmental Liaison Service suggested close cooperation with OHCHR in gathering relevant information on the subject. It offered to provide contacts with NGOs specialized in this area.

23. The activities of TNCs were changing continuously. Giant TNCs, for example, engaged in genetic engineering and technology. It was also important for the working group to examine the impact of the activities of TNCs on labour rights, health, the right to information, the exercise of political rights, and decision-making at the national and international levels.

24. There was a need to address the intellectual property regime in respect of TNCs. Research into the illegal transfer of capital from poor to rich countries as well as the speculative operations of stock markets and mergers which led to a concentration of monopolies should be carried out. The impact of the activities of TNCs on the rights of indigenous peoples should also be addressed.

II. PRESENT STANDARDS AND STANDARD-SETTING ACTIVITIES

General comments by members of the working group and experts of the Sub-Commission

25. A number of standard-setting activities had taken place: (a) United Nations-based activities; (b) business organizations' efforts to establish human rights guidelines as a result of a dialogue among business entities and sometimes as a result of NGO or shareholder-based pressures; and (c) NGO-based initiatives. TNCs were encouraged to adopt policies that would ensure not only the human rights of workers, but also the rights of persons within the larger communities in which they operated. The working group should explore ways to bring the various constituencies together, in order to develop a widely accepted and effective set of standards which would address the human rights responsibilities of TNCs and of the States in which they operated. The working group also needed to look for examples of standard-setting activities, in particular in areas not previously explored by the United Nations system, such as sustainability reporting guidelines for companies to report on progress achieved in areas such as the environment and other social and economic fields. Accordingly, it was important for the working group to solicit inputs from and offer inputs directed towards the elaboration of sustainability reporting guidelines.

26. With reference to the elaboration of a code of conduct for TNCs, the working group stressed the fact that the new code of conduct should have a binding character and require TNCs to prepare "human rights impact assessments" on a regular basis.

27. It was important to note that the effective implementation of a code of conduct could only be guaranteed with the full involvement of trade unions. The major concern in formulating such a code of conduct consisted of establishing an independent monitoring mechanism to ensure its implementation. A code of conduct should not be a substitute for collective bargaining.

Comments by NGOs

28. With regard to the collection of information on a Multilateral Agreement on Investment (MAI), it was important to examine the roles that TNCs played in formulating investment agreements.

III. CONCLUSIONS AND RECOMMENDATIONS

29. It was important to consider both the activities of TNCs and those of Governments to ensure that they interacted in a positive way to achieve the purpose of further promoting and protecting human rights.

30. In its final report, the working group would endeavour to identify a framework or definition of TNCs and the national and international legal standards which applied to them.

31. The principles of individual and collective responsibility of TNCs should be further elaborated. In many instances, human rights violations by TNCs were neither compensated nor punished because no laws existed.

32. The working group intends to consider developing a code of conduct for TNCs based on the human rights standards. Such a code would attempt to involve in a constructive manner the relevant business community and NGOs. Mr. Weissbrodt volunteered to prepare such a code of conduct in cooperation with NGOs having expertise on the subject.

33. Mr. Eide volunteered to prepare a paper compiling and analysing relevant human rights standards.

34. The Chairman-Rapporteur proposed to prepare a paper on the identification and examination of the effects of the activities of transnational corporations on the enjoyment of human rights as well as on a draft mechanism for the implementation of the code of conduct to be prepared by Mr. Weissbrodt.

35. NGOs and other interested parties were invited to submit relevant background materials to the working group at its next session, especially those relating to item 3 of the agenda.

36. The working group should address the issue of cultural rights and TNCs' activities in the context of globalization. As globalization swept across the world, individual cultures were being eroded. It was therefore important for the working group to discuss and understand the long-lasting implications of the activities of TNCs in the context of cultural rights.

IV. RECOMMENDATIONS FOR FUTURE WORK OF THE WORKING GROUP

37. As regards its future proceedings, the working group intends to invite all concerned constituencies to participate in its work, including the business community, NGOs and United Nations agencies having a mandate relating to this subject.

V. ADOPTION OF THE REPORT OF THE WORKING GROUP TO THE SUB-COMMISSION

38. At its final meeting, the working group adopted the present report to the Sub-Commission on the Promotion and Protection of Human Rights.

Annex

LIST OF DOCUMENTS BEFORE THE WORKING GROUP

1 Effects of structural adjustment policies on the full enjoyment of human rights: report by the independent expert, Mr. Fantu Cheru, submitted in accordance with Commission on Human Rights decisions 1999/102 and 1997/101 (E/CN.4/1999/50)

2 Working document on the impact of the activities of transnational corporations on the realization of economic, social and cultural rights, prepared by Mr. El Hadji Guisse, pursuant to Sub-Commission resolution 1997/11 (E/CN.4/Sub.2/1998/6)

3 The impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject-matter: report of the Secretary-General (E/CN.4/Sub.2/1996/12)

4 Giving a human face to the global market: the business case for human rights, statement by the United Nations High Commissioner for Human Rights to the WinConference '99, Interlaken, Switzerland, 10 June 1999

5 Global and regional foreign-direct-investment (FDI) trends, presentation by Karl P Sauvant, United Nations Conference on Trade and Development, at the Third Seminar on Investment, Trade and Economic Development, Evian, France, 21-22 April 1999

6 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office at its 204th session, Geneva, November 1977, document OB vol. LXI, 1978, Series A, No. 1

7 A Compact for the New Century, statement by the United Nations Secretary-General to the World Economic Forum, Davos, Switzerland, 31 January 1999, United Nations press release SG/SM/99/25

8 A Perilous Partnership: The United Nations Development Programme's Flirtation with Corporate Collaboration. The Transnational Resource and Action Center (TRAC) in collaboration with the Institute for Policy Studies and the Council on International and Public Affairs, March 1999

9 Making Investment Work for People: an International Framework for Regulating Corporations. Consultation paper, People Before Profits Campaign, World Development Movement, London, February 1999

10 Accord des citoyens et des peuples sur l'investissement et les richesses "ACPIR". Coordination française contre les clones de l'Accord multilatéral sur l'investissement (AMI), Observatoire de la mondialisation, sixième version, Paris, juin 1999

11 The OECD Declaration and decisions on international investment and multinational enterprises - basic texts, OECD/GD(97)36, Paris, 1997

12 Business Responsibility for Environmental Protection in Developing Countries Report of the International Workshop, Heredia, Costa Rica, 22-24 September 1997 United Nations Research Institute for Social Development and Universidad Nacional, Programa CAMBIOS, Geneva, May 1998

13 Eric Kolodner, Transnational Corporations Impediments or Catalysts of Social Development?, United Nations Research Institute for Social Development (UNRISD/OP/94/5), Geneva, November 1994

14 United Nations Development Programme, Human Development Report 1997

- - - - -

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1999/10
8 July 1999

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fifty-first session
Item 4 (d) of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

The content of the right to education

Working paper presented by Mr. Mustapha Mehedi

CONTENTS

	Paragraphs	Page
Foreword		3
Introduction	1 - 7	5
I. THE OBJECTIVES OF EDUCATION IN INTERNATIONAL INSTRUMENTS	8 - 37	6
A. Analysis of international instruments	8 - 17	6
B. Personal and social dimensions of educational objectives	18 - 37	8
1. Meaning and scope of the notion of personal development	20 - 29	9
2. The social implications of education	30 - 37	12

CONTENTS (continued)

		Paragraphs	Page
II.	THE RIGHT TO RECEIVE AN EDUCATION	36 - 69	14
	A. The right to receive "good education"	37 - 40	14
	B. Outline of some basic indicators	41 - 69	16
III.	IMPLEMENTATION OF THE RIGHT TO EDUCATION	70 - 76	19
	A. The right to education as a social right	71 - 73	19
	1. The question of free education	72 - 73	20
	2. What is meant by "compulsory" education	74 - 76	22
	B. The right to education as a "freedom right"	77 - 78	22
	C. The right to education as a collective or solidarity right	79 - 80	23
CONCLUSION		81 - 84	23

Foreword

It is pleasing to note that the question of the right to education has again been attracting attention. It may be worth recalling the latest developments in this respect and the main issues involved.

In its resolution 52/127 of 12 December 1997, the General Assembly welcomed the decision of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1997/7 of 22 August 1997, to place the question of the right to education on its agenda for the duration of the United Nations Decade for Human Rights Education (1995-2004). In the course of its forty-ninth session, held in August 1997, the Sub-Commission, in its resolution 1997/7, had requested Mr. Mustapha Mehedi to prepare a working paper on the right to education. Under the terms of the resolution, the purpose of the working paper was "to explain the content of the right to education, taking account, in particular, of its social dimension and the freedom it includes and of its dual civil and political rights and economic, social and cultural rights character, and to identify ways and means of promoting human rights education." The working paper was duly submitted at the Sub-Commission's fiftieth session in August 1998 (E/CN.4/Sub.2/1998/10).

It is also particularly noteworthy that the Commission on Human Rights should have decided, in its resolution 1998/33, to appoint a Special Rapporteur to focus on the right to education, within the general framework of economic, social and cultural rights. Mrs. K. Tomasevski's mandate, as Special Rapporteur, consists primarily in reporting on the status "of the progressive realization of the right to education", promoting "assistance to Governments in working out and adopting urgent plans of action", and taking into account "gender considerations", with a view to adopting immediate policies to counter all serious violations of that right, in particular where women are concerned.

The Committee on Economic, Social and Cultural Rights also held a general discussion on the question on 30 November 1998, on which occasion several reports of experts were presented and discussed at length. It is worth noting that all these efforts are not conducted by the committees in isolation, and that their frequent exchanges on the subject reflect a clear desire for complementary cooperation. The Special Rapporteur of the Commission on Human Rights and the author of this document in fact both took part in the above-mentioned general discussion.

The Special Rapporteur of the Commission on Human Rights, Mrs. K. Tomasevski, submitted her preliminary report (E/CN.4/1999/49) at the Commission's fifty-fifth session. In its resolution 1999/25, the Commission then decided to prolong the study of the right to education and in particular "to consider the possibility of organizing, in collaboration with relevant United Nations agencies ..., a workshop to identify progressive developmental benchmarks and indicators related to the right to education".

Lastly, the Committee on Economic, Social and Cultural Rights, at its May 1999 session, adopted a general comment on article 14 of the International Covenant on Economic, Social and Cultural Rights and decided to draft a new general comment on article 13.

The fact that the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and the Committee on Economic, Social and Cultural Rights decided to study the question of the right to education and the right to human rights education may be considered historic since this is the first time that this right has been studied in a systematic way by the human rights bodies. This widespread common interest in the subject is obviously not unconnected with the United Nations Decade for Human Rights Education and the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights.

In accordance with the mandate attributed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the author of this document, the present study further develops the considerations submitted in 1998. It should be seen as the first part of a full report submitted at two consecutive sessions of the Sub-Commission. This first part concentrates on the content of the right to education in its two basic but inseparable dimensions as a social right and a "freedom right". 1/ The problems of the realization of the right to education and human rights education will be dealt with more completely in the second part of the full report, which will be submitted at the fifty-second session of the Sub-Commission.

In the words of Mrs. Mary Robinson, United Nations High Commissioner for Human Rights, such education is "a right in itself, i.e. the right of all to learn about the rights and dignity of all and about means to ensure their respect". 2/

In order to avoid any repetition, and for lack of time (when the author was drafting his document, Mrs. Tomasevski's preliminary report had not yet been published), the questions dealt with in the report (E/CN.4/1999/49) submitted to the fifty-fifth session of the Commission on Human Rights have not been covered, but will be taken into account in the final report to be submitted to the Sub-Commission's fifty-second session.

Introduction

1. It should be remembered that the right to education, in all its dimensions, constitutes a fundamental human right. Moreover, the denial of this right amounts to a denial of other rights, since ignorance, which is the consequence of an incomplete education, deprives individuals of their dignity and of the means of achieving recognition. Civil and political rights, like freedom of expression, freedom of association or the right to political participation, only acquire substance and meaning for persons who have been educated.

2. Education is a vehicle for transmitting culture and hence cultural identity. Thus education promotes the realization of social and economic rights, insofar as educated persons have more chances of finding work, and are more aware of their right to health, housing and food. But more important still, they acquire the ability to access these basic benefits themselves.

3. The effective realization of the right to education provides an essential means of access to an adequate standard of living; it ensures the access to knowledge required by individuals to develop all their faculties, to improve the quality of their lives, to take clear-sighted decisions and to continue to learn, in order to live a dignified life within a democratic society.

4. On the occasion of the day of general discussion held by the Committee on Economic, Social and Cultural Rights on 30 November 1998, Mrs. Audrey Chapman stated that "Education is both a human right in itself and an indispensable means of realizing other human rights: civil, cultural, economic, political and social. It is the primary vehicle by which economically and socially marginalized people can lift themselves out of poverty and obtain the means to participate fully in national life. Its impact is thus felt in the future, as much if not more than in the present. Education benefits societies as well as individuals." 3/

5. Every person, whether child, adolescent or adult, is entitled to this right and needs to acquire knowledge in order to cope with social and professional responsibilities. It is worth emphasizing that education does not only concern children. The Universal Declaration of Human Rights, by stating in article 26 that "everyone has the right to education", implicitly recognizes that education is a continuous process. The word "education" is to be understood in the broad sense, as continuous, ongoing education, taking place in a great variety of professional, social and community fields and places. 4/

6. International and regional instruments that recognize the right to education often express the basic objectives served by education. These provisions constitute a statement of the common goals of educational systems in all countries. The realization of the right to education is not only aimed at the acquisition of information and knowledge, but also implies a great variety of objectives, which will benefit both individuals and the communities in which they live.

7. In order to analyse the content of the right to education as expressed in such instruments, we shall therefore begin by looking at the objectives they assign to education. 5/ We shall then study the terms used by the instruments as the foundation of the right to education, and lastly we shall consider the realization of the right: who is or who are responsible for the effective realization of the right to education?

I. THE OBJECTIVES OF EDUCATION IN INTERNATIONAL INSTRUMENTS

A. Analysis of international instruments

8. In our 1998 working paper, we already referred to the basic objectives of education (E/CN.4/Sub.2/1998/10, paras. 8-13). We mentioned the consensus that was to be found in international instruments on the subject. Quoting Manfred Nowak, 6/ we wrote that there is general agreement that education allows man freely to develop his personality and dignity, allows his active participation in social life in a spirit of tolerance, respects parents, national values and concern for the environment, and contributes to the development of human rights. We now wish to propose a more detailed analysis of the question of the objectives of education, as reflected in international and regional instruments on human rights.

9. Already in its preamble, the Universal Declaration of Human Rights mentions the objectives of the right to education:

> "... this ... Declaration [is proclaimed] ... to the end that every individual and every organ of society, keeping [it] constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and ... to secure their universal and effective recognition and observance ..."

In article 26, paragraph 2, the Declaration states the prime objective of education in these terms:

> "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."

10. The International Covenant on Economic, Social and Cultural Rights makes the same points in article 13, paragraph 1:

> "... education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms 2/ ... [It] shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace."

11. The Declaration of the Rights of the Child, in principle 7, states that the child "... shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society".

12. The Convention on the Rights of the Child, in article 29, lists a number of educational objectives, stating that education should be directed to:

> "(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; 8/
>
> (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
>
> (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
>
> (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
>
> (e) The development of respect for the natural environment."

13. In the Vienna Declaration and Programme of Action of the World Conference on Human Rights, it is stated that "education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups" (para. 33). It adds further on that States should strive to "... direct education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms". (para. 79).

14. UNESCO's Convention against Discrimination in Education restates in its article 5 the same objectives as article 26 of the Universal Declaration:

> "... education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms".

15. Similarly, the ILO/UNESCO recommendation concerning the Status of Teachers states in its Guiding Principles that "education from the earliest school years should be directed to the all-round development of the human personality and to the spiritual, moral, social, cultural and economic progress of the community, as well as to the inculcation of deep respect for human rights and fundamental freedoms".

16. All those texts, and many more, generally assign the following four objectives to education:

(a) The full development of the human personality, talents and abilities; 9/

(b) The strengthening of respect for human rights and fundamental freedoms; 10/

(c) The ability of every person to become a useful member of society; 11/

(d) The promotion of understanding, tolerance and friendship among all nations, and all racial, ethnic or religious groups, and the furtherance of United Nations activities for the maintenance of peace. 12/

17. In addition to those four objectives, which we may consider basic, other objectives are mentioned in international and regional instruments:

(a) The general transmission of the cultural heritage; 13/

(b) The development of national values; 14/

(c) The contribution to the economic and social development of the community; 15/

(d) The development of a sense of moral and social responsibilities; 16/

(e) The development of a critical ability and personal judgement; 17/

(f) The development of respect for the natural environment. 18/

B. Personal and social dimensions of educational objectives

18. The debate about the objectives of education has been going on for a very long time and educational philosophies are fairly easy to classify in two categories: those that believe that the main objective of education is to satisfy the needs of the individual and those that, on the contrary, believe that State or community requirements come first. 19/ Taking two of the most typical approaches, we have at one end Emmanuel Kant, for whom the aim of education is to develop individual fulfilment to its highest potential, and at the other end E. Barker, according to whom all real education should be dedicated to making people able to do their duty in their appointed station in life and in the community to which they belong.

19. The whole corpus of international instruments clearly shows that educational objectives still tend to fall under two major headings, the content of which we shall consider in more detail below, but which we shall demonstrate to be in fact indivisible.

1. Meaning and scope of the notion of personal development

(a) Developing all human dimensions

20. The notion of personal development, which is often referred to, remains the prime objective of education. This insistence on the personal dimension of education, which seems to take precedence over social or communal objectives, carries with it substantial implications. As educationists have been saying for the last 20 years, it focuses the "educational act" on the person who is being educated. The prime objective of education should therefore be centred on the person being educated, and only secondarily on the social relational fabric, which is often mentioned in connection with human rights.

21. As one expert puts it: "The notion 'education shall be directed to the full development of the human personality' indicates the general ethical aim of education which would influence the individual. The development of the entire personality includes all the dimensions of the human being: physical, intellectual, psychological and social. The aim is that each individual could develop himself according to his or her abilities and talents, to a harmonious person." 20/

22. Personality development is obviously linked to freedom: education contributes to the development of the educated person insofar as the latter is respected and educated with the aim of becoming able to make real choices. According to the classical distinction between the individual and the person, this appeal for freedom does not need to be interpreted as an obstacle to social bonds or solidarity. This distinction is clearly drawn by the famous Geneva educationist Jean Piaget in a comment on article 26 of the Universal Declaration of Human Rights, which is worth quoting in full:

> "From both a psychological and a sociological point of view, a distinction has to be drawn between the individual and personality. The individual is the self-centred ego which is opposed by its moral or intellectual egocentrism to the relations of reciprocity inherent in all evolved social life. The person, on the other hand, is the individual who either freely accepts an existing form of discipline, or who contributes to establishing one, thereby submitting voluntarily to a system of reciprocal rules that subject his or her freedom to respect for others. Hence personality is a form of intellectual awareness and moral awareness, as far removed from the state of anomy typical of egocentrism as from heteronomy arising from external pressures, because it achieves its independence by attaching it to reciprocity. In more simple terms, personality is opposed both to anarchy and to constraint, because it is independent and because two independent beings can only be linked by reciprocal relations. We may admit, all in all, that aiming at 'the full development of the human personality and ... the strengthening of respect for human rights and fundamental freedoms' amounts to educating individuals who are capable of intellectual and moral independence and who respect the same independence in others, precisely by virtue of the reciprocity rule that legitimizes their own independence." 21/

23. The explicit consensus in the above-mentioned texts regarding the desirability of directing education primarily to personal development does not mean to say that the other objectives, more social in nature, should be disregarded. Nevertheless, this priority does appear to imply that social objectives should themselves serve the person, who can only be fulfilled if placed in an environment where human rights are respected for and therefore by that person. If education is supposed to enable the educated person to "play a useful role in society", it is because such a role is useful to persons and to their development and not "for the sake of" society as an abstract entity.

24. This clear emphasis on the primacy of the person must therefore act as a safeguard against the often dreaded tendencies of an educational approach directed exclusively at serving a social body or in extreme cases an ideology. This is an important point: it is the historical background against which the Universal Declaration of Human Rights and all post-World War II legal instruments were drafted that explains why the whole reasoning behind human rights is imbued with the determination to avoid a mass ideology ever taking precedence again over the rights of human beings and trampling their dignity. 22/ It is undeniable that education, when used by a regime that does not respect the person, provides an ideal vehicle for all forms of totalitarianism. This is clearly what has given rise to the insistence expressed in legal instruments concerning the right to education on the essentially personal dimension of educational objectives. Hence educational policy must not be based on the so-called "higher interest of the State" or on a primarily collective or social set of values. On the contrary, "the best interests of the child shall be the guiding principle of those responsible for his education and guidance" (Declaration of the Rights of the Child, principle 7). And in order to make sure that no State assumes the right to equate the best interests of the child with those of the State, the Declaration specifies that the "responsibility lies in the first place with his parents". This fact will be crucial when we come to deal with the issues of the roles of the State and the family in education and of human rights education as a fundamental right of the child.

(b) Cultural identity

25. To say that education should be directed to the full development of the human personality is equivalent to recognizing the person's right to discover, choose and express his or her own identity. As the Fribourg Group points out:

> "The process of identification occurs not only with reference to specific values, but also in relation to universal characteristics needed for human dignity that are recognized in all human rights. Identity is the interface between personal and communal characteristics. The individual is not isolated; in its most original form, individuality expresses itself insofar as a position is assumed by a person in relation to others (whether individuals or communities) as a human being, recognized as such. To the extent that identity is asserted as a right to be different, without referring to the reverse side, i.e. the right to be the same, it is no longer possible to understand the unity or positive content of identity, that is, the ability to recognize that one is freely tied either to others and/or to a heritage." 23/

26. Personal development, the prime objective assigned to education by international instruments, therefore depends on achieving a "cultural identity", also appropriately defined by the Fribourg Group as "a set of cultural values by which persons or groups define themselves, express themselves and wish to be recognized; cultural identity implies freedoms inherent in personal dignity and combines cultural diversity, the specific and the universal, and memory and project in a constantly evolving process". 24/

(c) The special case of language rights for minorities

27. The primacy given to the personal dimension has a great many consequences for pedagogy, of course, but also for educational policies, as we shall see further on. For the time being, we would like to raise a specific issue which is often discussed in international bodies, namely the education of children - or adults - belonging to linguistic minorities. For ethnic and linguistic minorities, the right to education is a vital means of safeguarding and strengthening their cultural identity. For any given minority, the right to education raises the question of the right to be taught its own language and/or in its own language; this question, which is not explicitly resolved by article 26 of the Universal Declaration of Human Rights, 25/ is raised in many other instruments, such as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (art. 4, para. 3), in these terms:

> "States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue."

28. According to article 8 of the European Charter for Regional or Minority Languages, which covers the subject in more detail, States have a choice between different types of obligation in relation to education of or in the regional or minority language, at the pre-school, primary or secondary level, and where technical or professional, university and other forms of education are concerned. The Parliamentary Assembly recommendation on an additional protocol on the rights of national minorities to the European Convention on Human Rights (1993) states that every person belonging to a national minority shall have the right to learn his/her mother tongue and to receive an education in his/her mother tongue at an appropriate number of schools and of State educational and training establishments, located in accordance with the geographical distribution of the minority (art. 8/1). The Framework Convention for the Protection of National Minorities also calls on the parties "to recognize that every person belonging to a national minority has the right to learn his or her minority language" (art. 14).

(d) Conclusion: education as a source of identity

29. After taking time to consider the side issue of minorities, we are now in a position to draw up a summary list of some characteristics of the right to education:

(a) There is a broad consensus in international instruments concerning the right to education regarding the fact that the prime objective of education consists in the development of personality;

(b) This personality development is very closely linked to other objectives, second though not secondary, concerning the quality of the social relations needed for and resulting from personality development;

(c) The very close link between personal and social objectives may be described by the notion of cultural identity; this cultural identity at the same time is derived from tradition and constitutes a dynamic area of freedom and creativity;

(d) The realization of the right to education therefore implies respect for and the protection and development of the cultural identity of every person. In the background paper he presented at the day of general discussion held by the Committee on Economic, Social and Cultural Rights on 30 November 1958, 26/ Patrice Meyer-Bisch states that:

> "The right to education clearly occupies pride of place among cultural rights, since it is the one by which respect for and the protection and development of the right to identity can be achieved. It renders respect for other cultural rights, 27/ as well as human rights in general, both possible and realistic. From the very standpoint of any form of individual and collective development, it is the best indicator of a development policy or programme."

2. The social implications of education

30. As we have said before, giving priority to personal objectives in no way detracts from the importance of social objectives, since individuals cannot fully develop if they are denied the right to live in a relational environment imbued with the values that underlie human rights. With regard to the ability of "all persons to participate effectively in a free society", 28/ which should be furthered by the realization of the right to education, the general value of education and personal freedom that this implies is understood to constitute the basis of a socially responsible life. 29/

(a) Going beyond the traditional cleavage between civil and social rights

31. When we talk about the right to education, we must clearly look beyond the traditional distinction between civil rights and social rights, since it would be too restricting to consider the right to personal development as belonging to the first of those categories and the social implications of that right as belonging to the second. In his basic document, Patrice Meyer-Bisch puts forward some fundamental considerations: referring to the right to education in relation to cultural rights, he initially draws a distinction between the beneficiary of the right, an individual, and the purpose of the right, which has a social dimension. He defines the purpose as the incorporation of cultural capital as a result of which all social and political bonds can be created. 30/

32. The purpose of the right therefore takes on an essentially relational aspect. Again, according to Meyer-Bisch:

> "The beneficiary is first and foremost an individual, as in the case of all human rights, whereas the purpose possesses a particularly

well-developed social dimension. The right to education is imbued through and through by a dialectic between autonomization and socialization (partial application of the first opposition constituting identity, i.e. individual/universal) in the sense that it should give rise to two opposing processes of equal importance, namely, the autonomization of the individual acquiring knowledge and learning to exercise his freedoms, and his socialization, or apprenticeship with a view to his integration in society. It would be wrong to say that the first dimension comes under the heading of civil rights whereas the second falls under social rights, since freedoms (to participate) are indispensable aspects of any socialization in a democratic society: the civil/social fissure cuts across freedoms. Some authors place more emphasis on one process than on the other, although the two aspects of this right are incomprehensible if taken individually, for they are both constituent parts of it. The socialization of the individual is democratic only insofar as it is achieved through his activity, recognizing rights, obligations and possibilities of creation. Otherwise, socialization is tantamount to reduction to a collective standard. The beneficiary of this right as it is realized - the educated person - is the creator of a social bond." 31/

(b) The objectives of education are indivisible

33. If human rights are indivisible, then by analogy educational objectives must also be indivisible. Implicitly, this is the thinking behind the UNESCO report to the International Commission on Education for the Twenty-first Century:

"If it is to succeed in its tasks, education must be organized around four fundamental types of learning which, throughout a person's life, will in a way be the pillars of knowledge: learning to know, that is acquiring the instruments of understanding; learning to do, so as to be able to act creatively on one's environment; learning to live together, so as to participate and cooperate with other people in all human activities; and learning to be, an essential progression which proceeds from the previous three. Of course, these four paths of knowledge all form a whole, because there are many points of contact, intersection and exchange among them." 32/

34. These four pillars of education can be juxtaposed with the objectives referred to earlier. It is perhaps a pity that the chiefly personal dimension, highlighted in the international instruments, should be relegated to the fourth pillar, "learning to be", so that this essential dimension is in some way reduced to "proceeding" from the previous three.

35. In the light of the indivisibility of objectives, we can then have a fresh look at the summary list of objectives given above (see paras. 16 and 17). The "strengthening of respect for human rights and fundamental freedoms", the "ability of every person to become a useful member of society", the "promotion of understanding, tolerance and friendship among all nations, all racial, ethnic and religious groups" are at once the origin, condition and consequence of education aimed at personal development and based on the higher interests of the person educated:

(a) The origin, because any society which respects human rights fundamental freedoms, one where every citizen can become a useful membe society and in which tolerance and respect for diversity are fundamenta values, will necessarily engender an educational system which is respec the individual and his or her fundamental freedoms and rights;

(b) The condition, because it is hard to see how a society that not care for human rights could ever produce an educational system that

(c) The consequence, because a society's worth depends on the p quality of its members and the horizontal and vertical bonds they manag establish. And, this quality is chiefly dependent in turn on the value education each individual receives.

The "general transmission of the cultural heritage" and "the development national values" should then be understood as values that will strengthe "cultural identity", both for the individual and for the community.

36. The "contribution to the economic and social development of the community" is by no means unrelated either as an objective to the person objectives of education, since it is generally accepted that the realiz of the right to education constitutes a genuine investment. Referring t Meyer-Bisch:

> "It is not enough to say that the right to education is a long-ter investment. It yields extremely large dividends, even in the shor term, for the enterprise, health education and family education, i medium term for primary, secondary and vocational training schools in the long term for university education ..." 33/

37. Lastly, the "development of a sense of moral and social responsibilities" and "a critical ability and personal judgement" are objectives that can only be achieved with an educational policy based on personal dignity and aimed at the full development of the personality. shall return to these aspects when considering the respective roles of t State and civil society in the realization of the right to education.

II. THE RIGHT TO RECEIVE AN EDUCATION

38. Now that it has been established that the international instrument assign a set of indivisible objectives to education, it seems appropriat consider briefly the expressions used by these instruments as a basis fo rights of each individual to receive education. The most frequently use these is simple and concise: "Everyone has the right to education":

(a) The Universal Declaration of Human Rights (art. 26, para. 1) "Everyone has the right to education. Education shall be free, at least the elementary and fundamental stages."

(b) The International Covenant on Economic, Social and Cultural R (art. 13): "The States parties to the present Covenant recognize the rig everyone to education."

(c) The Declaration of the Rights of the Child (principle 7): "The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages."

(d) The Convention on the Rights of the Child (art. 28, 1 (a)): "States parties recognize the right of the child to education [...]: they shall [...] (a) make primary education compulsory and available to all".

(e) The Vienna Declaration and Programme of Action (para. I.33): "The World Conference on Human Rights reaffirms that States are duty bound [...] to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. [...] Education should promote understanding, tolerance, peace and friendly relations between the nations [...] The World Conference on Human Rights notes that resource constraints and institutional inadequacies may impede the immediate realization of these objectives."

(f) The Convention Against Discrimination in Education (art. 4): "The States parties to this Convention undertake [...] to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

> (a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all."

(g) The American Declaration of the Rights and Duties of Man (art. XII): "Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity."

(h) The African Charter on Human and Peoples' Rights (art. 17): "Every individual shall have the right to education."

(i) The wording used by the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (i.e. the European Convention on Human Rights) appears more restrictive in that it formulates the right in negative terms (art. 2): "No person shall be denied the right to education." In their comments on this Protocol, however, P.-M. Dupuy and L. Boisson de Chazournes play down the practical effects of "negative" formulas:

> "Within the European system for the protection of human rights, the right to education, 34/ is distinguished by its negative formulation. However, this wording should not be misunderstood and lead people to imagine that the only obligations assumed by States are obligations of abstention. A State is under an obligation not to refuse the right to education to holders of that right who come under its jurisdiction; but it is also an obligation to ensure respect for that right. Moreover, the State is under the obligation not to interfere in the exercise of that right by disregarding the religious and philosophical convictions of the parents." 35/

39. The fundamental nature of the right to receive an education is thus underlined by the fact that virtually all the international instruments link it to an obligation. Rather than weakening the right, this obligation strengthens it, inasmuch as it "should be interpreted as protecting the child's rights [, implying] that the child [has] certain rights that neither the State nor the parents [can] deny". 36/

A. The right to receive "good education"

40. The statement that everyone has the right to receive an education clearly implies much more than the mere expectation that children should go through a rite of passage so as to acquire, if they are lucky, basic minimal skills. 37/ In other words, the right to receive an education not only implies access to education for all but stipulates in itself that this right clearly contains all the objectives discussed at length above. There is therefore no need to revert to those objectives, except to suggest that using indicators to measure the actual implementation of the right should not be restricted to evaluating the availability of teaching structures, school attendance rates, equality of opportunity for boys and girls to attend school, etc.

41. What makes it so difficult to design indicators in this field is that they must contain qualitative components that not only measure the purely cognitive dimension but also incorporate the stated objectives in terms of personal fulfilment, development of the sense of responsibility, respect for and promotion of personal freedom, and the development of human rights. It has to be acknowledged that many national constitutions set forth a right to education, but generally speaking these constitutional rights do not guarantee any particular quality of education or else set only very modest and vague standards in this respect. 38/

42. The World Declaration on Education for All: Meeting Basic Learning Needs 39/ sets forth a large number of criteria on quality of education which merit closer attention. After drawing attention in its preamble to the reality of illiteracy and to the general objectives of education as described above, the Declaration states what it understands by "meeting basic learning needs". "These needs comprise both essential learning tools (such as literacy, oral expression, numeracy and problem solving) and the basic learning content (such as knowledge, skills, values and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions and to continue learning" (art. 1, para. 1).

43. While stressing that the listing of these needs should not lead to a rigid conception of education, the forms of which legitimately vary with the passage of time and in different cultures, the Declaration draws attention to the social and community consequences of good education. The effective implementation of such education can only come about by going beyond the way education is currently conceived and hence requires an "expanded vision that surpasses present resource levels, institutional structures, curricula, and conventional delivery systems while building on the best in current practices" (art. 2, para. 1).

44. The prerequisite for implementing this expanded vision is to provide equal access for all to educational services and hence to make efficient educational structures available to all according to their specific needs and without discrimination of any kind. Over and above this obvious requirement, however, the right to education implies an obligation to achieve results, since attainment of the objectives of education depends ultimately on whether people actually learn as a result of the training provided, i.e. "whether they incorporate useful knowledge, reasoning, ability skills and values" (art. 4).

45. It is noteworthy that the Declaration refers to "active and participatory approaches" as the most appropriate way of "assuring learning acquisition and allowing learners to reach their fullest potential". This comment should not be taken as a mere pedagogical footnote; in actual fact it opens up a genuinely new approach to the way that educational policies ought to be designed if the objectives of education are to be truly attained.

46. The majority of educational systems are in fact based on the capacity of the person educated to fit into a collective "mould", generally defined by the State. It is hard to see how the eminently personal objectives of education can be achieved within systems constructed on this kind of basis. On the contrary, the primacy accorded to the individual implies that "good" education should be founded on respect for differences and on personal freedom, and should therefore be based on a multiplicity of educational supply, a multiplicity that reflects the diversity of individuals, aspirations and projects. These aspects will be discussed later.

47. What is even more important, the "dignity of the person" must be respected in the classroom itself; even the youngest students cannot be brought to fulfilment of their potential unless they are regarded, as far as their abilities permit, as genuine participants in their own education. This paper will show that the responsibility for implementing the right to education must be widely shared among the public authorities, the teachers and - most important of all - the persons being educated and/or the families legally responsible for them.

48. With regard to this widening of the area of responsibility, article 7 of the World Declaration on Education for All highlights the need for new partnerships in education:

> "National, regional and local educational authorities have a unique obligation to provide basic education for all, but they cannot be expected to supply every human, financial or organizational requirement for this task. New and revitalized partnerships at all levels will be necessary: partnerships among all subsectors and forms of education, recognizing the special role of teachers and that of administrators and other educational personnel; partnerships between education and other government departments, including planning, finance, health, labour, communications and other social sectors; partnerships between government and non-governmental organizations, the private sector, local communities, religious groups and families. *The recognition of the vital role of both families and teachers is particularly important.*" (Author's italics)

B. Outline of some basic indicators

49. All these considerations can be summarized in terms of four dimensions that characterize "good" education and can be used to outline indicators for measuring educational quality: 40/

(a) Free access to training systems must be guaranteed, without any form of discrimination. Achieving non-discrimination clearly depends on dealing with the "traditional" sources of discrimination such as sex, race, social status, etc. In the field of education, however, there is in addition the question of non-discrimination with regard to the plans, talents and the philosophical or religious opinions of the individual or family. Free access thus also means freedom of choice, which is meaningless unless genuine educational pluralism is practised. 41/ In this case quality indicators might cover effective freedom of choice, including the freedom to establish and direct educational institutions, as well as the absence of "economic" discrimination in the exercise of this freedom.

(b) A minimum level of education must be guaranteed, a threshold below which the individual is considered unable to enjoy basic freedoms. Here the quality indicators are more traditional: literacy rates, unemployment rates, etc.

(c) Differentiated education must be introduced, which means that cultural and social differences must be taken into account. A differentiated education has an intercultural dimension, in particular showing respect for the minority rights referred to earlier. It must be pointed out, however, that this intercultural dimension means not only the right of everyone to be strengthened in their own cultural identity but also the duty of everyone to open their minds to the culture of others. Here quality indicators will include the ratio between the number, size and specific situation of cultural communities in any given place on the one hand and the variety of training facilities on the other. Moreover, these indicators could also analyse the quality of intercultural open-mindedness within a school curriculum.

(d) The right of the person educated to participate and to take responsibility must be recognized, whether the person is a child starting school or an adult undergoing continuous training. This right constitutes respect for the beneficiary of the right to education as actor. Here the indicators should evaluate the actual degree of participation by the various partners (families, schools, district, enterprise, public authorities, etc.) in decision-making, in funding and in educational provision. They might also measure the effectiveness of teaching provided and the enjoyment of human rights and democratic culture in educational establishments.

III. IMPLEMENTATION OF THE RIGHT TO EDUCATION

50. We may turn to the question of whose responsibility it is to implement the right to education. This right is generally regarded by the experts as one of the most complex. Its cross-sectoral character and the impossibility of assigning it specifically to one or other of the "generations" of human rights have already been stressed. In his first working paper (E/CN.4/Sub.2/1998/10), the author referred to the issue of the cross-sectoral

nature of the right to education (paras. 6 and 7); he also stated in substance that neither the State nor families can be released from the responsibility for implementing education and that the discussion should focus on the respective roles of the public authorities and civil society in this respect.

51. It is generally accepted in the literature that the right to education, on account of its dual nature, belongs to both the first and the second generations of human rights. However, some authors even maintain that, on historical grounds and for reasons linked to the formulation of international and regional instruments, the right to education is a specific and possibly unique case of a right that belongs not only to the first two generations of rights but also to what is termed the third generation of human rights, namely collective rights and solidarity rights. 42/

A. The right to education as a social right

52. The right to education is often regarded as part of economic, social and cultural rights. As a "social" right it entitles every individual to gain access to the education structures set up by the State, so that the latter is under a "positive" obligation. The realization of the right to education obliges the State to set up an educational system that is accessible to all without discrimination and, at least as regards primary education, free of charge.

53. Here it will be helpful to consider some of the basic documents:

(a) The Universal Declaration of Human Rights (art. 26, para. 1):

> "Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

(b) The International Covenant on Economic, Social and Cultural Rights (art. 13, para. 2):

> "2. The States parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
>
> (a) Primary education shall be compulsory and available free to all;
>
> (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
>
> (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education."

(c) The Convention on the Rights of the Child (art. 28):

"1. States parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means."

54. It is apparent from all these documents and from many others that the public authorities have an obligation to implement the right to education in respect of two essential aspects:

(a) Making available primary education 43/ or basic education or elementary education that is free of charge, together with secondary and vocational education tending to be de facto free of charge;

(b) Fulfilling the obligation to educate.

1. The question of free education

55. At first sight the provision of free elementary education may seem easy to implement. However, it is not easy to implement in practice and the comments made by Piaget in 1971 are unfortunately still valid:

"Compulsory elementary schooling is meaningless unless primary education is free of charge (and of course extended as such to groups of adults who are still illiterate). Moreover, free education [...] should not be limited to the basically negative measure of not charging enrolment fees. Many other problems arise, some of which are extrinsic in nature (such as free transport for children living a long way from school, or the provision of free meals and even changing rooms), while others affect the teaching itself, for instance, the important question of providing educational materials free of charge." 44/

As Piaget suggests, the right to education for all and the fact that many adults have not had access to elementary education imply that the right to free elementary education also covers this population of deprived adults.

56. As D. Hodgson points out:

> "Although children are the main beneficiaries, the right to education has been recognized by the various international and regional instruments as belonging to all persons. This acknowledges the lifelong and continuous nature of the learning process as well as the ever-increasing demands for maintaining up-to-date information and skills. In its Recommendation on the Development of Adult Education of 1976, the General Conference of UNESCO called on Member States to recognize adult education as a necessary component of the educational system. Latin American countries had earlier gone further in recognizing adult education to be on a par with primary schooling in terms of the priorities of their educational systems. Adult education was first explicitly mentioned at the regional level. Article 48 of the Charter of the Organization of American States of 30 April 1948 recorded the agreement of Member States to 'strengthen adult vocational education systems'. International recognition followed in 1960 in the form of Article 4 (c) of the Convention against Discrimination in Education, which states: '1. The States parties [...] undertake [...] to promote equality of opportunity and of treatment in the matter of education and in particular [...] (c) to encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity.' The right of adults to a basic education has been subsequently recognized in similar language at both the international and regional levels. Adult education has also been recognized in the specific contexts of agrarian reform and rural development and equality of opportunity for women." 45/

57. In view of the complex nature of the problem, how can a State that faces up to its responsibility of providing access to education in accordance with the standards set forth above be distinguished from a State whose educational provisions fall below a threshold where the right to education becomes meaningless? This question concerns the "core content" of the right, which many authors have endeavoured to identify. This core content needs to be defined for all rights: this is what Philip Alston has in mind when he states that each right must "give rise to an absolute minimum entitlement, in the absence of which a State party is to be considered to be in violation of its obligations". 46/

58. With regard to the right to education, most writers incorporate in the core content some components relating to the "freedom" dimension of the right. This will be discussed at greater length below in connection with freedom of education. Nevertheless, as Meyer-Bisch points out, we can already identify a certain number of obligations which form an essential part of the core content of the right to education, bearing in mind that simply making education available does not meet the requirements of the right unless that education possesses the right qualities to attain its objectives. 47/ Accordingly, Meyer-Bisch suggests the following as the minimum content of free basic education: 48/

(a) An ability to read and write (measures to combat illiteracy and functional illiteracy, including day-to-day means of communication);

(b) Familiarity with human rights and their immediate and proper application in places where training is provided. 49/ The realization of this right is an excellent indicator of the effectiveness of schooling: real instruction in freedoms, in participation, and in discovery of and respect for universal values;

(c) At least some exposure to other cultures, for example, learning of two or more languages in the light of local conditions; knowledge of the regional and national heritage, and familiarization with the heritage of at least one foreign country; mutual knowledge of the cultures of origin of partners and their integration at the training establishment;

(d) Maintenance of the knowledge and employability of workers;

(e) Respect for traditional ways of transmitting knowledge, if not at variance with the above.

2. What is meant by "compulsory" education

59. In practice, the compulsory nature of the right to education is tending to become more and more widespread, at least as regards elementary education. However, this created some difficulties at the time the Universal Declaration of Human Rights was drafted. Apart from the fact that the adjective "compulsory" seemed too precise to be included in a declaration, some feared that its use would entail too many obligations, both for the State and for the family. However, it was eventually realized that the term "compulsory" really meant a protection of the rights of the child, who may claim certain rights that nobody, neither the State nor even the parents, may deny. The compulsory element reflects the duties both of the State and of the family towards the child, at least for as long as the latter is not sufficiently mature to decide for himself. Here it is interesting to note that the question immediately arose as to whether compulsory education implied an educational monopoly of the State and a de facto limitation of the freedom of parents to choose their child's education. 50/

60. If elementary education must be free of charge, and if in addition it is compulsory, the question arises as to how the parents can still use their freedom to exercise the primary responsibility for education, for example, by choosing schools other than those run by the public authorities, and how they can make such choices while continuing to benefit from free education. It is this question of the right to education in its dimension of freedom that now needs to be considered. 51/

B. The right to education as a "freedom right"

61. As was stressed at the start of this paper, the primary objective of education is to serve the personal development of the students, in other words to give them the opportunity to develop their potential in all areas. Particular attention was drawn to the fact that focusing on the individual necessarily implies that education should help to make the person who is being

educated genuinely free: education, in other words, is both a free and freedom-forming act. Thus freedom of education, far from being a partisan demand, forms part of the core content of the right to education. Moreover, it is closely linked to a number of other freedoms recognized by the international instruments. 52/

62. Two specific rights are recognized by article 13 of the International Covenant on Economic, Social and Cultural Rights:

> "3. The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
>
> 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State." 53/

63. The first Protocol to the European Convention for the Protection of Human Rights confirms this right of parents: "In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (art. 2)." 54/

64. Article 18, paragraph 1, of the International Covenant on Civil and Political Rights refers to the same freedom, linking it explicitly to the right to freedom of thought, conscience and religion:

> "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

65. We may also consider this approach by G. Burdeau:

> "Three concepts coexist under the heading of liberty of education: the concept of the right to teach, that of the right to learn and that of the right to choose the teacher. The right to teach exists when a person is authorized to transmit his knowledge or beliefs to others. The right to learn consists in the fact that every individual, subject only to his intellectual ability, may endeavour to acquire the same education and the same knowledge as those who are favoured by fortune. The right to choose the teacher implies a diversity of educational bodies with equal prerogatives." 55/

66. Respect for the liberty of parents must not be a purely passive obligation, whereby the State is content merely to authorize parents not to send their children to State schools. It was long believed that liberties could exist which did not imply a positive commitment by the public authorities. This attitude no doubt explains the judgement of the European Court of Human Rights in the Belgian language case (23 July 1968), 56/ which is sometimes adduced by those who interpret liberty of teaching as a mere negative obligation on the part of the State.

67. This issue was discussed in the author's first working paper (E/CN.4/Sub.2/1998/10, sect. 2.3), where it was shown that the State has three inseparable duties: to respect, protect and guarantee the fulfilment of any right whatsoever. Specifically, therefore, it must respect liberty of education, protect it against violations and do everything in its power to ensure that the right is effectively enjoyed by all. 57/ This issue will not be discussed again here, except to define these obligations of the State with the aid of a fuller classification proposed by Patrice Meyer-Bisch in his background paper:

> "Various kinds of identifiable obligations in laws can be distinguished, depending on cultural specificities; they can also be observed through a system of indicators:
>
> (a) Negative obligations (respect) for all suppliers: of the State towards individuals and institutions in society (associations, enterprises) [...];
>
> (b) Minimum positive obligations (protection) also concern all suppliers who must imperatively contribute to the partnership necessary to safeguard the core content of the right to education (basic obligations), control by the State being a last resort [...];
>
> (c) Action to prevent positive obligations (respect for the indivisibility of the system of freedoms) from having negative effects. This type of obligation is frequently overlooked and consists of ensuring that the implementation, particularly of basic measures (compulsory schooling and literacy programmes, for example), is respectful of freedoms and, more generally, of all human rights. Here again the State does not itself possess the means necessary to do this and the situation must be monitored through discussions between all the players in a public forum;
>
> (d) Positive obligations (full realization). These obligations may be described as 'programmatic' since they depend on available resources - not only financial resources but also human and structural resources." 58/

68. We may now consider some developments in judicial practice in this respect: the discussion here will be confined to decisions of the French and Spanish constitutional courts.

69. Attention is first drawn to the major decision of the French Constitutional Council of 23 November 1977. In a case which challenged

articles 1 and 3 of the Guermeur Act, concerning the specific nature of school establishments on the one hand and the question of the funding of private schools on the other hand, the Constitutional Council ruled that the principle of liberty of education is one of the fundamental principles that are acknowledged by the laws of the Republic, were reaffirmed by the preamble to the 1946 Constitution and on which the 1948 Constitution conferred constitutional status. Further, the Constitutional Council, bearing in mind the principle of free and non-religious public education, affirmed that the principle of liberty of education must not exclude the existence of private education or the granting of State aid for such education under the conditions laid down by the law.

70. The Spanish Constitutional Court was called upon to rule on the issue in 1981 and 1985. In its latter judgement 59/ the Court stressed that freedom of education is an extension of ideological and religious freedom and of the right to the free dissemination of thoughts, ideas or opinions (seventh legal ground); it also stated (II.11) that the constitutional precept expressed in the terms "the public authorities shall provide assistance to educational establishments that meet the requirements laid down by the law" cannot be interpreted as a rhetorical statement such that the decision as to whether or not to grant such assistance is left entirely in the hands of the legislature.

71. In the above-mentioned texts and decisions it is stated in effect that freedom of education forms part of freedom of conscience and that the State, in order to safeguard this freedom, must ensure the equality of citizens before the law, in particular by granting financial resources in a non-discriminatory manner. In other words, it is affirmed that freedom of education and the granting of material resources to permit the exercise of this freedom are a consequence of the major principle of the equality of citizens.

72. The same point is made by the resolution on freedom of education in the European Community of 1984:

> "In accordance with the right to freedom of education, member States shall be required to provide the financial means whereby this right can be exercised in practice, and to make the necessary public grants to enable schools to carry out their tasks and fulfil their duties under the same conditions as in corresponding State establishments, without discrimination as regards administration, parents, pupils or staff."

73. To sum up, three fundamental aspects of freedom of education can be distinguished:

(a) First of all, freedom of education protects the individual against any tendency on the part of the public authorities to consider that their duty of ensuring respect for the right to education involves the introduction or preservation of an educational monopoly. Attention has already been drawn to the tragically grotesque forms assumed by educational monopolies, for example under the Nazi regime.

Since the first objective of education is the development of the human person, its implementation cannot be the responsibility of the State alone. Training people for liberty and responsibility can only be done within a school system that is based on the freedom and responsibility of all concerned and it is difficult to see how a strictly State school can promote the participation of all in educational responsibility. 60/

Stated in positive terms, the rejection of an educational monopoly of the State means the promotion of educational pluralism. This pluralism obviously covers the "religious and philosophical convictions" mentioned above, but appears to be broader in scope: according to P. Wachsmann, "[freedom of education] must mean not only freedom to open a private educational establishment, but the possibility of an education that differs substantially from that provided by the State in its inspiration, content and methods". 61/

(b) Secondly, freedom of education means the possibility of establishing and directing educational establishments. This right, which is recognized, inter alia, by article 13 of the International Covenant on Economic, Social and Cultural Rights, is obviously limited by the fact that the State has the duty to institute a "framework of equity and responsibility" 62/ corresponding to what the international instruments refer to as "such minimum standards as may be laid down". The crux of the matter is clearly to define this minimum, since the general provisions governing the authorization to establish and run schools must not prevent the development of a genuinely pluralistic educational system.

(c) Thirdly, freedom of education concerns the teachers themselves. UNESCO has pointed out that "some observers have expressed fears of a trend towards the 'deprofessionalization' of teachers and teaching, with the teacher's role reduced to that of a technician primarily responsible for implementing prescribed procedures, rather than for making a professional judgement about the instructional approach that would be most appropriate and effective in the particular situation". 63/

Although none of the instruments refers specifically to academic freedom, the topic is dealt with indirectly in a number of texts, in particular article 18 of the Covenant on Civil and Political Rights. It is most desirable to draft an instrument in the near future that explicitly guarantees this freedom, without which the university becomes a meaningless institution. 64/

C. The right to education as a collective or solidarity right

74. Some authors also consider the right to education from the relatively new angle of the "third generation" of human rights. Here they generally refer to two basic texts:

(a) The International Covenant on Economic, Social and Cultural Rights (art. 15, para. 4): "The States parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields."

(b) The Convention on the Rights of the Child (art. 28, para. 3): "States parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries."

75. M. Nowak specifically mentions the convergence of objectives between the right to education and the right to development, in that both are conducive to full respect for and protection of all human rights. 65/

76. Article 5 of the UNESCO Convention against Discrimination in Education explicitly links the objectives specific to education in general to the values of solidarity:

> "1. The States parties to this Convention agree that:
> (a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."

The same article also deals with the issue of national minorities:

> "(c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language [...]."

CONCLUSION

77. The spirit of the instruments would seem to be clear: the right to education principally concerns personal development, but in cases where this personal development is itself linked to the quality of the relational fabric that the person is able to weave with his or her peers, this fundamental right necessarily takes on a "universal" dimension, since social or national communities can no longer exist and develop in isolation. This universal dimension is an established fact for education: modern means of communication are bringing geographically distant populations subjectively closer together, while migrations - a reality of our times - are tending to make every region into a kind of "microcosm".

78. It would therefore seem that the scope of the right to education may be described as being defined by three concentric circles. At the centre - and this is a statement with very far-reaching educational implications - is the person, the subject of education. Surrounding the person is the local community, with its democratic structures, within which the person, alone or with others, is called upon to play an active and creative role. Beyond that, by extension, is the entire human community. There must be no misunderstanding: here we are dealing with apparently simple principles which

require those involved in education to strike out in genuinely new
either in order to take a concept of education that is still too na
individualistic and open it up to universal values or in order to t
education that is too universalist or ideological and refocus it on
person.

Notes

1/ For this study, the author has referred in particular t
studies which consider the two basic aspects of the right to educati
light of the indivisibility of human rights. The studies referred t
the works of the European Association for Education, Law and Policy
particular J. de Groof (ed.), Subsidiarity and Education Aspects of
Comparative Educational Law, Louvain, ACCO, 1994, and J. de Groof a
Jan Fiers, The Legal Status of Minorities in Education, Louvain/Amer
ACCO, 1996. The author also acknowledges the works of Professors F.
Ch.L. Glenn, S. Jenkner, J.L. Martinez Lopez Muñiz and P. Meyer Bisc

2/ M. Robinson, "The United Nations Decade for Human Rights
1995-2004", Lessons for Life, United Nations, New York and Geneva, 1

3/ "Violations of the right to education" (E/C.12/1998/19),

4/ Fribourg Group, draft Declaration on Cultural Rights, Fr
1998.

5/ We have not attempted to quote the classical texts conce
the right to education; we did so, however, in our 1998 working pape
(E/CN.4/Sub.2/1998/20, para. 8). For a general view of the basic te
A. Fernandez and S. Jenkner, Déclarations et conventions internation
le droit à l'éducation et à la liberté d'enseignement, Info-3 Verlag
Frankfurt, 1995.

6/ The Right to Education in A. Eide et al., Economic, Soci
Cultural Rights, M. Nijhoff, Dordrecht, 1995.

7/ The Additional Protocol to the American Convention on Hu
in the Area of Economic, Social and Cultural Rights of 17 November 1
("Protocol of San Salvador") uses a similar wording in article 13, ad
more items: "... strengthen respect for human rights, ideological p
fundamental freedoms, justice and peace".

8/ Even though the text, especially if one refers to the Fr
version ("leurs potentialités"), appears to refer rather to the poten
the mental and physical abilities rather than to the child's own, it
denied that there is a consensus regarding the fact that education i
be understood simply in its dimension of social integration, but tha
prime objective is the human person per se. This distinction is ele
by Jean Piaget (see para. 22 below).

9/ Article 26 (b) of the Universal Declaration of Human Rights; article 5 (1) (a) of the Convention against Discrimination in Education; article 13 (1) of the International Covenant on Economic, Social and Cultural Rights; article 29 (1) of the Convention on the Rights of the Child; guiding principle 1 of the ILO/UNESCO Recommendation concerning the status of teachers; articles 2 and 12 (2) (4) of the American Convention on Human Rights; article 13 (2) of the Protocol of San Salvador.

10/ Article 55 of the United Nations Charter; article 26 (2) of the Universal Declaration of Human Rights; article 13 (1) of the International Covenant on Economic, Social and Cultural Rights; article 29 (1) (b) of the Convention on the Rights of the Child; article 7 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination; article 5 (1) (a) of the Convention against Discrimination in Education; principles III and VI of the 1965 Declaration on the Promotion Among Youth of the Ideals of Peace, Mutual Respect and Understanding Between Peoples; principle 1 of the ILO/UNESCO Recommendation concerning the Status of Teachers; principles 7 and 18 (c) of the UNESCO Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms; article 13 (2) of the Protocol of San Salvador.

11/ Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights; principle 7 of the Declaration of the Rights of the Child; article 29 (1) (d) of the Convention on the Rights of the Child; article 12 of the American Declaration of the Rights and Duties of Man; article 12 (1) of the American Convention on Human Rights.

12/ Article 26 (2) of the Universal Declaration of Human Rights; article 13 (1) of the International Covenant on Economic, Social and Cultural Rights; principle 10 of the Declaration of the Rights of the Child; article 29 (1) (d) of the Convention on the Rights of the Child; article 7 of the Convention on the Elimination of All Forms of Racial Discrimination; article 5 (3) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief; article 5 (1) (a) of the Convention against Discrimination in Education; preamble of the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples; principles 4 (b), 6, 7, 17 and 18 (b) of the UNESCO Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms; article 13 (2) of the Protocol of San Salvador.

13/ Principle 7 of the Declaration of the Rights of the Child; principle 18 (f) of the Recommendation concerning Education; article 12 (7) of the American Convention on Human Rights.

14/ Article 29 (1) (c) of the Convention on the Rights of the Child; article 4 of the American Convention on Human Rights.

15/ Article 12 of the American Declaration of the Rights and Duties of Man; articles 2 and 12 (1) of the American Convention on Human Rights.

16/ Principle 7 of the Declaration of the Rights of the Child; article 12 (4) of the American Convention on Human Rights; principle 5 of the UNESCO Recommendation concerning Education for International Understanding, Cooperation and Peace and Education Relating to Human Rights and Fundamental Freedoms.

17/ Principles 7 and 10 of the Declaration of the Rights of the Child; article 5 (3) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; principles 4 (e), 5 and 18 (d) of the UNESCO Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms; article 7 (d) of the African Charter on Human and Peoples' Rights; principle V of the 1924 Geneva Declaration.

18/ Article 29 (1) (e) of the Convention on the Rights of the Child.

19/ For a detailed study of the question, see F. Przetacznik, The philosophical concept of the right to education as a basic human right, pp. 257-283.

20/ P. Arajärvi, in A. Eide, Universal Declaration of Human Rights: Commentary, Oslo, Scandinavian University Press, p. 405.

21/ J. Piaget, Où va l'éducation?, Paris, Denoël/Gonthier, Bibl. Médiation, 1972, pp. 85 and 86.

22/ P. Arajärvi, op. cit. The author, describing the preparatory work for the drafting of the Universal Declaration of Human Rights, recalls the background against which the debates took place: "In meetings 67-69 of the third session of the Commission, the Commission discussed the right to education and how to take into consideration the ethical principles of the content of education based on the experiences of World War II and especially the education of the Nazis." (p. 407).

23/ Fribourg Group, Projet relatif à une déclaration sur les droits culturels, Fribourg, 1998, p. 23.

24/ Ibid., p. 12, art. 1b of the Draft Declaration of Cultural Rights. The notion of culture is spelt out in the same article: "The term culture covers the values, beliefs, languages, knowledge and arts, traditions, institutions and lifestyles by which individuals or groups express the meanings they give to their existence and to their development."

25/ For the link between "development of the personality" and "the right to be taught in one's own language", see A. Milian i Massana, Derechos Lingüísticos y Derecho Fundamental a la Educación, Un Estudio Comparado: Italia, Bélgica, Suiza, Canada y España, Barcelona, Civitas, 1994; this expresses the view in particular that the basic content of the right to education - a right which is often enshrined in Constitutions - does not include the right to be taught in one's own language; it is even more doubtful whether the full development of the personality served by the right to education covers such a right either.

20/ The right to education in the context of cultural rights (E/CN.12/1998/17, para. 3). In the Fribourg Group draft mentioned in notes 21 and 24, it is also stated that "cultural identity is inherent in the beneficiary and belongs to him. Its non-observance constitutes a violation of the integrity of the human being and renders the effective exercise of other human rights impossible. This objective which all cultural rights have in common justifies their fundamental character among human rights, and hence the illicitness of any act detracting from their substance."

21/ The right to education enables individuals to act and lead their lives independently and makes them both beneficiaries and guarantors of all other human rights. It is what the experts understand by the English term "empowerment right". Meyer Bisch uses the expression "The right to education ... is the instrument of all human rights".

22/ International Covenant on Economic, Social and Cultural Rights.

23/ As C. Dalbergh points out: "The phrase still seems to have a certain 'instrumental' ring in that it speaks of 'effective' participation in a free society, and it does not refer to the individual as the focal subject, but rather to collectivities like 'all persons' and 'society'. From this perspective, it looks as if the right to education is to be interpreted solely in terms of a social right which corresponds with an obligation of the State to provide for educational opportunities and ... in restricting this right subjects the child to mandatory education (at least at the elementary level). ... The question to be asked is whether it can be established that the right to education is also linked to the protection of individual freedom, i.e. the classical human rights concept, as it was in need to be suggested by the reference of the human rights instrument analysed here to the goals of personal development, tolerance and respect for human rights." (The Right to Education as an International Human Right, in German Yearbook of International Law, vol. 35, 1992, p. 160. See also our own comment in the written paper on the right to education (E/CN.4/Sub.2/1998/10) presented at the fiftieth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.)

24/ E/CN.12/1998/17, para. 30 and note 4.

25/ Ibid., para. 4.

26/ Jacques Delors, coordinator, The treasure within (UNESCO report to the International Commission on Education for the Twenty-first Century), Paris, 10-14 June, 1996.

27/ E/CN.12/1998/17, para. 27. Meyer Bisch continues with these more general considerations: "Consequently, the economic approach to human rights in general, cultural rights and the right to education in particular can no longer be reduced to a cost/benefit analysis. Economic logic implies a search for a balance between costs and benefits. The various benefits offered by education are innumerable, directly in terms of productivity at the level of the formal and informal sectors and indirectly in terms of social capital, namely, the improvement of the social and political fabric, without which no

development is sustainable, subject to respect for individual freedoms. Indicators reflecting investment approaches and their profitability can be compiled for this purpose." (para. 24)

24/ In the limited context of this working paper, no attempt will be made to deal with the difficult distinction between instruction, teaching and education. Here it should suffice to quote from the judgement of the European Court of Human Rights in the case of Campbell and Cosans: "The education of children is the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development." (Quoted in the article by P. M. Dupuy and L. Boisson de Chazournes, in La Convention européenne des droits de l'homme, edited by L.E. Pettiti, E. Decaux and P. H. Imbert. Paris, Economica, 1995, p. 998)

25/ Ibid., p. 1006.

26/ K. Halvorsen. Notes on the realization of the human right to education. Human Rights Quarterly, vol. 12, 1990, p. 351.

27/ A.H. Bitensky. Every child's right to receive excellent education. The International Journal of Children's Rights 2. Kluwer Academic Publishers, 1994, p. 147.

28/ Bitensky, loc. cit., p. 139.

29/ Declaration adopted by the World Conference on Education for All, Jomtien, Thailand, 5-9 March 1990.

30/ See the background paper by F. Mayor Zaragoza mentioned in note 29 above, most of the reflections that follow are derived from this paper.

31/ This point will be discussed at greater length below in connection with the issue of freedom of education.

32/ This concept is derived from the work of K. Vasak, in particular it was put forward in the inaugural lecture of the 1978 training session at the International Institute of Human Rights in Strasbourg.

33/ These terms present a semantic difficulty, which can be stated here but not discussed. The concepts of primary or elementary education cover realities that often differ widely from one country to another. For example, there are countries where at the time the covenants were ratified primary education covered nine years of schooling, whereas today various educational reforms have reduced primary education to four or five years, while secondary education begins earlier. It is certainly not stretching the meaning of the texts to affirm that, since the duties of the State refer to both free education and compulsory education (see paras. 59 and 60 below), it follows that free education should apply throughout the period of compulsory education, thus including a substantial part of secondary education.

34/ Jean Piaget, op. cit., pp. 59 and 60.

45/ D. Hodgson, The international human right to education and education concerning human rights, The International Journal of Children's Rights, Kluwer International, vol. 4, 1996, p. 256.

46/ P. Alston, Out of the abyss: The challenges confronting the new UN Committee on Economic, Social and Cultural Rights, Human Rights Quarterly, vol. 9, 1987, p. 353.

47/ See section A of chapter I.

48/ E/C.12/1998/17, para. 21.

49/ See the documents of the Copenhagen meeting of the Conference on Security and Cooperation in Europe (10 and 11), which are very precise and deserve to be taken up by the United Nations.

50/ On this point of history and the implications of the adjective "compulsory", see K. Halvorsen, loc. cit., pp. 351 and 352, and D. Hodgson, loc. cit., p. 241.

51/ We deliberately leave aside the question of defining what is the subject of the obligation: Is it the school that is compulsory? Or only the education? Or only the teaching? It is just worth pointing out that many countries recognize the right to education at home.

52/ Two non-governmental organizations have drawn the attention of international experts to this freedom: the International Organization for the Development of Freedom of Education (OIDEL) and the European Forum for Freedom in Education (EFFE). In this connection, readers should consult the publications of OIDEL, in particular basic document EC/C.12/1998/14 submitted to the Committee on Economic, Social and Cultural Rights for the day of general discussion on 30 November 1998 and the study by A. Fernandez, La liberté d'enseignement dans les instruments de protection des droits de l'homme, International Geneva Yearbook, vol. IX, Geneva, 1995, pp. 105-111. EFFE has published a Declaration concerning the Human Right to Freedom in Education in Europe (1991) and a Memorandum on the Role of Education in the Process of European Integration (1991). These texts are included in the compilation by A. Fernandez and S. Jenkner quoted in note 5.

53/ Liberty of education, understood as the right of individuals and bodies to establish and direct educational establishments, is expressed in other international instruments, for example the Convention on the Rights of the Child (art. 29, para. 2) and the Protocol of San Salvador (art. 13, para. 4). For an analysis of liberty of education in international instruments, see the study by A. Fernandez quoted in note 52. For a philosophical analysis, see E. Carneiro (ed.), Ensino livre. Uma fronteira da modernidade social, Edipoes Asa, Rio Tinto, 1994.

54/ Here it is appropriate to quote from the article by P.M. Dupuy and L. Boisson de Chazournes mentioned in note 34: "While the concept of religious conviction presents no problem of definition, the concept of philosophical convictions, on the other hand, has been interpreted in widely different ways. In the Belgian language case, for example, the [European] Court [of Human

Rights], referring to the preparatory work involved in the negotiation of the First Protocol, commented that only religious convictions were intended; the term 'philosophical' had been added to the term 'religious' only in order to cover opinions that were not consistent with religious thinking or teaching, such as agnostic or atheistic convictions. This interpretation was criticized because its excessively narrow character was contrary to the spirit of article 2. Others have warned against too broad an interpretation that would distort Article 2. [...]. The Campbell and Cosans case gave the Court an opportunity to specify the meaning of the concept of philosophical convictions. According to the Court, the term 'convictions' denotes 'views that attain a certain level of cogency, seriousness, cohesion and importance'. [...] Having regard to the Convention as a whole, including article 17, the expression 'philosophical convictions' in the present context denotes, in the Court's opinion, such convictions as are worthy of respect in a 'democratic society' [...], are not incompatible with human dignity [and do] not conflict with the fundamental right of the child to education' (p. 1005).

55/ Les libertés publiques. Paris, Dichon et Durand-Auzias, 1972, p. 315.

56/ In this case the Court, while recognizing that the right to education would be meaningless unless it implied the right to be taught in one's mother tongue, appears to hold the view that this right does not constitute an obligation for the State to offer such teaching to all. See F. Coomans, Clarifying the Core Elements of the Right to Education, in The Right to Complain about Economic, Social and Cultural Rights, Netherlands Institute of Human Rights, Utrecht, 1995, p. 18. Other authors believe that the judgement of the Court cannot be interpreted in a purely restrictive sense; see J.L. Martínez López-Muñiz, Libertad de enseñanza y derecho a la educación en el Convenio Europeo de Derechos Humanos, Lectures 2, OIDEL, Geneva, 1993.

57/ "According to the Maastricht Guidelines:

> Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. [...] The obligation to protect requires States to prevent violations of such rights by third parties. [...] The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judiciary and other measures towards the full realization of such rights." Audrey Chapman, "Violations of the right to education" (E/C.12/1998/19, para. 13).

58/ E/C.12/1998/17, para. 18.

59/ Judgement 77/1985. For a detailed analysis of the issue, see F. Riu, Todos tienen derecho a la educación, Madrid, 1988.

[illegible]

previous educational experience, as they saw fit. Some of the capital could be set aside to enable people to receive continuing education throughout their adult lives. Each person could increase his or her capital through deposits at the 'bank' under a kind of educational savings scheme" (p. 92).

62/ World education report, Paris, UNESCO, 1998, p. 65.

63/ The World University Service carried out some excellent work on academic freedom in the 1980s, leading to the Lima Declaration in 1988. UNESCO laid the foundations for an international declaration at the International Congress on Education for Human Rights in 1991. These texts are included in the compilation by A. Fernandez and S. Jenkner mentioned in note 5.

64/ Op. cit., p. 198 (see note 6).